Supreme Court, U.S.
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In the

Supreme Court of the United States

SALEEM PORTER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Petition for Writ of Certiorari

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QUESTIONS PRESENTED

1) WHETHER A VIRGINIA STATE TROOPER EXCEEDED THE PROPER SCOPE OF A TRAFFIC STOP OF THE PETITIONER'S MOTOR VEHICLE?

2) WHETHER THE DECISION OF THE FOURTH CIRCUIT COURT OF APPEALS IS IN CONFLICT WITH NUMEROUS DECISIONS OF THIS COURT?

3) WHETHER A VIRGINIA STATE TROOPER EXCEEDED THE SCOPE OF THE PETITIONER'S CONSENT TO QUICKLY LOOK THROUGH HIS MOTOR VEHICLE?

LIST OF PARTIES

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CITATIONS OF PRIOR OPINIONS

The opinion of the United States Court of Appeals for the Fourth Circuit appears at Appendix A to the Petition and is unpublished (U.S. v. Porter, Unpublished Op. No. 00-5013, Argued September 26, 2002, Decided October 29, 2002). (Appendix A)

JURISDICTIONAL STATEMENT

This Petition seeks review of an Opinion and Order dated October 29, 2002 from the Fourth Circuit Court of Appeals reversing a District Court's Suppression Order. The Suppression Order was entered on November 21, 2001 by Senior United States District Court Judge Richard L.Williams. (Appendix B) The United States appealed this decision and the Fourth Circuit reversed and remanded the District Court's Order. Jurisdiction to review this case on Writ of Certiorari is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves an interpretation of the Fourth Amendment to the United States Constitution. A Virginia State Police drug interdiction Trooper violated the Petitioner's Fourth Amendment rights when he unlawfully exceeded the scope of a traffic stop by further detaining the driver. In addition, the Trooper exceeded the consent granted by Mr. Porter to quickly "look through" his vehicle when he conducted an expansive and time consuming search of the vehicle's interior, exterior, undercarriage, and contents.

The relevant portion of the Fourth Amendment to this case reads as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."

The Petitioner was detained as the result of a traffic stop in which the Trooper alleges that the he was speeding and failed to use a turn signal during a lane change. The Petitioner was not issued a summons for either of these alleged traffic violations.

STATEMENT OF THE CASE

A. STATEMENT OF FACTS

On August 22, 2001, Saleem Porter, a young black male, was driving northbound on Interstate 95 through Hanover County, Virginia in a white van with Georgia license plates. At the same time, a Virginia State Police Drug Interdiction Team was patrolling that highway north of Richmond. The Interdiction team consisted of several unmarked units including three vehicles driven by Trooper Elliott, Agent Batkins, and Agent King. Their primary job was to interdict drugs and weapons on the interstate highway. Trooper Elliott did not have a radar unit in his unmarked car, nor was he wearing the standard Class A Virginia State Police Trooper Uniform. The Trooper was however displaying a badge and a gun. The Trooper's car was equipped with a dash mounted camera and the stop and search were recorded and later transcribed.

According to Trooper Elliott, Mr. Porter's van passed his vehicle, and as a result, he paced the van at speeds he alleges were between 70 and 79 miles per hour. The posted speed in this area is 65 miles per hour. Also, Trooper Elliot stated that Mr. Porter changed lanes from the left lane to the middle lane and then from the middle lane to right lane, only using a turn signal for two-blinks on the second lane change. As a result of these alleged infractions, Trooper Elliott activated his emergency equipment and executed a traffic stop. However, Trooper Elliott admitted that Mr. Porter's van was "going with the flow of traffic" and that three-quarters of the drivers on the road were also speeding.

Trooper Elliott approached Mr. Porter's vehicle and asked him for his license and registration. Mr. Porter promptly provided these documents and Trooper Elliott began to explain his reasons for executing the traffic stop. Trooper Elliott requested that Mr. Porter exit his vehicle and accompany him to his unmarked state police car. The Trooper stated to Mr. Porter "[c]ome on back to my car if you don't mind. We'll run this stuff and get you out of here in a hurry." Mr. Porter exited his vehicle using only his left hand to open the car door. Based on the Trooper's statement that he would be "out of here in a hurry," Mr. Porter left the van's engine running. Later, the Trooper turned off the vehicle stating "I'm going to cut it off. I thought it was off. And the keys are on the driver's seat."

Although the Trooper had no probable cause or reasonable suspicion to believe that Mr. Porter was carrying a weapon or involved in any criminal activity, he sought and was granted the driver's consent for a pat-down search. Trooper Elliott did not find any weapons or contraband as a result of this search. The Trooper later claimed that such factors as Mr. Porter's baggy clothes, cell phone, and the presence of fast food wrappers in his vehicle raised his suspicion that the driver may be involved in the transportation of narcotics.

Trooper Elliott then placed Mr. Porter in his patrol car. Mr. Porter was never free to exit the Trooper's vehicle and he has remained in the custody of law enforcement since the initiation of this traffic stop. Once inside the police car, Trooper Elliott interrogated Mr. Porter about an injury to his arm. These questions had nothing to do with where or why Mr. Porter was traveling and preceded any discussion regarding the alleged traffic violations or his driver's license, registration, travel plans, etc.. In addition, before Trooper Elliott called the dispatcher to check on the status of Mr. Porter's license and registration, he questioned him about where he was traveling to and from, his plans upon arrival at his destination, his occupation and business in Georgia, how long he had been a resident in that state, why he lived in Georgia and where he had previously resided. Although Trooper Elliott claims that he was filling out paperwork, he questioned Mr. Porter for about twelve minutes before radioing his dispatcher to verify Mr.

Porter's license. After the Trooper finally radioed his dispatcher, he continued to question Mr. Porter about the injury to his arm.

Trooper Elliott received verification that Mr. Porter's license was valid, returned the license to him, and admonished him about his driving infractions. Trooper Elliott did not issue Mr. Porter a traffic ticket for either of these alleged infractions. The Trooper told Mr. Porter to "have a good trip", and due to the injury to the driver's right arm, Trooper Elliott asked him if he needed assistance in opening the car door. Mr. Porter responded affirmatively and waited for the Trooper to open the door. The Trooper stated under oath that "I thought because of his injury he wasn't able to open my door since it was his right arm. I asked him if he wanted me to open the door for him. He stated, yes." However, Mr. Porter never made it out of the Trooper's vehicle nor was he ever free to leave. Instead, Trooper Elliott clearly stated to Mr. Porter "before you go" indicating that there was unfinished business and that the detention of Mr. Porter had not been terminated.

Trooper Elliott then asked Mr. Porter if he had any firearms, weapons, money, drugs, or "anything like that" in his car. Mr. Porter responded "no". Elliott then explained that he was part of a special group of Troopers and that his job was to stop the flow of weapons and drugs through the Commonwealth of Virginia. Despite the fact that Mr. Porter affirmatively stated that he was not carrying any contraband, the Trooper sought Mr. Porter's consent to simply "look through" his vehicle and instructed him it would be

"just a minor inconvenience ... take a quick look, and we'll get you out of here and no problems." Mr. Porter consented to this "look through" believing that it would simply entail a quick "plain view" observation to see if there were any problems or discrepancies. Trooper Elliott admitted that he had no reasonable suspicion or probable cause to believe that Mr. Porter might be carrying contraband. The Trooper stated to the driver "I don't think you have anything".

The Trooper informed Mr. Porter that another car may be pulling up in a few minutes to back him up but he never asked or received his permission or consent for additional agents to be involved in the "look through" of the vehicle. Despite the lack of any explicit consent to search, nor any reasonable suspicion or probable cause to believe that Mr. Porter was involved in any criminal activity, Trooper Elliott exited his vehicle and, along with Agent Batkins, began to thoroughly search Mr. Porter's van.

This quick "look through" became an extensive search of the vehicle's interior, exterior, and all of its contents. Three agents were involved in the search which lasted well over an hour before any contraband was located. The Troopers unzipped and rummaged through Mr. Porter's luggage, lifted up the van's carpeting, and extensively searched the vehicle's undercarriage. No contraband was located during this part of the search; however, Trooper Elliott claims he became suspicious when he located a gap between the underneath of the van and the rear floorboard. Trooper Elliott and Agent King, acting without Mr. Porter's consent or permission, ran a canine around the van

which, according to the agents, signaled contraband located in the rear of the vehicle. At this point, the Troopers placed Mr. Porter in handcuffs and informed him that he was under "investigative detention" and not to free to leave.

The Troopers located a suspected hidden compartment in the rear of the van, and although they attempted to pry open this compartment with a crow bar, they were unsuccessful in gaining entry until over an hour after the traffic stop and the "quick look through" of the vehicle had begun. After the door was finally opened and an object was seized, they then discover the cocaine that was inside a plastic bag located in the compartment.

The United States charged Mr. Porter with Possession with the Intent to Distribute "Crack' Cocaine in violation of 21 U.S.C. §§ 841(a)(1) & 841(b)(1)(A)(iii) & 18 U.S.C. § 2. He was also charged with Possession with Intent to Distribute Cocaine Powder in violation 21 §§ 841(a)(1) & 841(b)(1)(B)(ii) & 18 U.S.C. § 2. On August 28, 2001, Mr. Porter was Ordered to be detained by a U.S. Magistrate Judge and he has remained incarcerated since the date of his arrest. On September 6, 2001, a Federal Grand Jury returned Indictments against Mr. Porter on the above charges. Mr. Porter was arraigned in the District Court on September 12, 2001.

As stated above, Mr. Porter's counsel filed a Motion to Suppress the evidence and this Motion was heard in the District Court on November 16, 2001 and argued on November 21, 2001. On November 21, 2001,

Judge Williams ordered that the evidence be suppressed. The United States appealed and the Fourth Circuit Court of Appeals reversed and remanded the District Court's Suppression Order on October 29, 2002.

B. THE DISTRICT COURT'S RULING

This Petition arises from Senior District Court Judge Richard L. Williams' Suppression Order entered November 21, 2001. In his Findings of Facts, the Judge stated that although the Trooper made a legitimate traffic stop that from the time the Trooper pulled Mr. Porter's van to the side of the road that there was never any intention to treat this as a traffic stop. Also, the Judge stated that the Trooper "did not observe any illegal activity within the van, nor did he have any suspicion of criminal activity or reason to question the defendant other than in regard to the traffic violations."

The Judge found that the Trooper did not have a reasonable suspicion to justify a pat-down search and that the Trooper "exceeded the scope of a proper traffic stop when he continued to detain the defendant for further questioning and to seek his consent to search after completing the license check and issuing a warning." Judge Williams explained that "whatever the defendant believed after Elliott told him to "have a good trip," when Elliott stopped him by saying "before you go", the defendant was not actually free to leave nor did he perceive that he was free to leave.... [t]he totality of the circumstances in this case show that the

encounter was not consensual, and Elliott therefore exceeded the legitimate scope of the traffic stop by continuing to detain the defendant."

The Judge also held that even if the Defendant's consent to search was the result of a consensual encounter that the Trooper exceeded the limited scope of consent granted by Mr. Porter. Judge Williams stated "the defendant voluntarily consented to a "look through" only. It was limited consent, and the scope of the allowable search was therefore limited to looking inside the vehicle for anything suspicious or indicative of contraband. He did not give (the Trooper) permission to open any part of the vehicle, nor did he grant permission for other officers to participate."

C. THE COURT OF APPEALS' DECISION

The United States appealed Judge William's Suppression Order and the case was argued before the Fourth Circuit Court of Appeals on September 26, 2002. The Fourth Circuit concluded that the duration of the traffic stop was reasonable, that the conversations between Mr. Porter and the Trooper were consensual and that Mr. Porter voluntarily gave his consent to the search of his van. They also concluded that "a reasonable person would have believed that the Troopers' search of Mr. Porter's van was well within the scope of his consent." The Court reversed the District Court's Suppression Order and remanded the case for further proceedings.

SUMMARY OF ARGUMENT

The District Court correctly held that the Trooper exceeded the scope of a proper traffic stop by extensively interrogating Mr. Porter on matters that were unrelated to his travel plans or any of the alleged traffic infractions. This Court held in Delaware v. Prouse, 440 U.S. 648, 653 (1979) that the Fourth and Fourteenth Amendments are implicated during a traffic stop because "stopping an automobile and detaining its occupants constitute a "seizure" within the meaning of those Amendments." Also, this Court has stated that "an investigative detention must be temporary and last no longer than it is necessary to effectuate the purpose of the stop." Florida v. Royer, 460 U.S. 491, 500 (1983).

It is clear that Mr. Porter was detained within the meaning of the Fourth Amendment and the Trooper, acting without reasonable suspicion of criminal activity, exceeded the scope of the traffic stop by interrogating the driver on matters that were not relevant to his alleged traffic infractions or travel plans. In addition, before the driver was free to leave, the Trooper further detained and delayed the driver with questions regarding the transportation of contraband and by seeking his consent to quickly "look through" his vehicle. It is simply wishful rhetoric to state that Mr. Porter or any reasonable person would have felt free leave the scene or ignore the Trooper's questions while they were being detained in a state police vehicle and the Trooper prefaced his questioning with the statement "before you go...". The District Court

correctly held that the Trooper exceeded the scope of a traffic stop and that the extended detention of Mr. Porter was unconstitutional.

This Court was confronted with a similar fact scenario in Ohio v. Robinette, 519 U.S. 33, 36 (1996); however, the Court did not consider whether or not the Respondent's permission to search was consensual because the question was not presented in the Writ of Certiorari. However, in his dissent, Justice Stevens examined this issue and stated that "by the time Robinette was asked for consent to search his automobile, the lawful traffic stop had come to an end; Robinette had been given his warning, and the speeding violation provided no further justification for detention. The continued detention was therefore only justifiable, if at all, on some other grounds." Id. at 50 Therefore, this case presents an opportunity for this Court to address this issue, follow the language of Justice Stevens in Robinette, and hold that extending the detention of routine traffic stop to search a vehicle without reasonable suspicion of criminal activity constitutes an illegal search.

The District Court also correctly held that the consent granted by Mr. Porter to simply "look through" his vehicle was limited in scope and the search exceeded that for which the Petitioner gave permission. The Court of Appeals erred by holding that a reasonable person would have believed that the Trooper's search of Mr. Porter's was well within the scope of his consent. This Court has made it very clear that "[w]aivers of constitutional rights [not only] must be knowing, intelligent acts done with sufficient

awareness of the relevant circumstances and likely consequences." Brady v. U.S., 397 U.S. 742, 748 (1970). Also, this Court has explained that "[t]he scope of the search must be strictly tied to and justified by the circumstances which render its initiation permissible." Royer at 500. Trooper Elliott sought consent from Mr. Porter for a quick "look through" of his vehicle that would be "minor inconvenience" and would have him "out of here in no problems". The Trooper then preceded to call in additional officers and a canine to conduct an extensive search of the vehicle's interior, exterior and contents which lasted well over an hour before any contraband was located. This expansive search was hardly a quick "look through" and greatly exceeded the scope of consent that was granted by Mr. Porter.

ARGUMENT

I. MR. PORTER'S CONSENT TO "LOOK THROUGH" HIS VEHICLE WAS THE RESULT OF AN ILLEGAL DETENTION BY TROOPER ELLIOTT DURING A TRAFFIC STOP THAT EXCEEDED ITS PROPER SCOPE.

A. STANDARD OF REVIEW

The issue of whether or not a seizure has occurred is a question of law. U.S. v. Mendenhall, 446 U.S. 544, 554 (1980). The question of whether a person has been seized in violation of the Fourth Amendment is reviewed *de novo* on appeal. See Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973); see also Mendenhall, 446 U.S. at 551. An appellate court,

however, "should take care both to review findings of historical fact only for clear error and to give due weight to inferences drawn from those facts by resident judges and local law enforcement officers." Ornelas v. United States, 517 U.S. 690, 699 (1996).

B. DISCUSSION

Trooper Elliott exceeded the scope of a proper traffic stop by further detaining and questioning the Petitioner on whether or not he was carrying contraband through the State of Virginia. The Fourth Circuit Court of Appeals erred by holding that this questioning amounted to a consensual encounter. Although this Court has previously condoned pretextual traffic stops, there is little doubt that Trooper Elliott's motivation for stopping Mr. Porter's vehicle was to gain the driver's consent to conduct an extensive search for contraband. A close examination of the Trooper's actions during this stop reveal a totality of circumstances that would lead any reasonable person to believe that they were detained and that they must respond to the questions regarding the transportation of contraband prefaced with the phrase "before you go." This decision is in conflict with numerous decisions of this Court, and therefore should be reversed.

As stated above, the detention of a driver and automobile during a routine traffic stop is a seizure that implicates the protections of the Fourth Amendment. Delaware v. Prouse, 440 U.S. 648, 653 (1979). Under the Fourth and Fourteenth Amendments, warrantless searches are "per se

unreasonable ... subject to only to a few specifically established exceptions." Katz v. United States, 389 U.S. 347, 357 (1967) Also, this Court has explained that "whether a consent to search was in fact voluntary or was the product of duress or coercion, express or implied, is a question to be determined from the totality of circumstances." Schneckloth, 412 U.S. at 227.

The District Court held that the pretextual nature of this traffic stop was evident from the moment Trooper Elliott sought Mr. Porter's consent to perform a pat down search of his person. The Trooper claimed that his motivation for this intrusion was because Mr. Porter was wearing baggy pants and that his shirttail was untucked. At Mr. Porter's Detention Hearing, the Trooper testified that his suspicions were further aroused because Mr. Porter was carrying a cell phone and that his van contained fast food wrappers. The District Court noted that these factors do not amount to reasonable suspicion of criminal activity. Although Mr. Porter consented to this pat-down search and it was fruitless, the District Court held that the Trooper had no reasonable suspicion to justify the intrusion and that this action clearly indicated "proof of his intent to extend the investigation of the defendant beyond a routine traffic stop."

Once inside the Trooper's vehicle, Mr. Porter was subjected to extensive interrogation on matters that were not relevant to the alleged traffic violations. The Trooper questioned Mr. Porter for a period exceeding ten minutes before he radioed his dispatcher to verify his documents. This Court has stated that during a proper traffic stop "the officer may ask the

detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions." Berkemer v. McCarty, 468 U.S. 420, 439 (1984). The District Court properly held that Trooper Elliott had no reasonable suspicion to believe that Mr. Porter was involved in any criminal activity, and whether or not this was casual conversation or intensive interrogation, it certainly wasn't a moderate number and exceeded what was held permissible by this Court in Berkemer. This unjustified and extensive interrogation of the driver prior to the Trooper even radioing his dispatcher constitutes an illegal detention.

The Fourth Circuit Court of Appeals has explained that during a traffic stop

> [t]he officer may request a driver's license and vehicle registration, run a computer check, and issue a citation. When then the driver has produced a valid license and proof that he is entitled to operate the car, he must be allowed to proceed on his way, without being subject to further delay by police for additional questioning. Any further detention for questioning is beyond the scope of the Terry stop and therefore illegal unless the officer has a reasonable suspicion of a serious crime. U.S. v. Rusher, 966 F.2d 868, 876 (4th Cir. 1992), cert. denied, 506 U.S. 926 (1992)(emphasis added).

This Court has stated that "[t]his much, however, is clear: an investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." Florida v. Royer, 460 U.S. 491, 500 (1983).

This traffic stop lasted much longer that necessary, however, the Court of Appeals stated that Mr. Porter "engaged in casual conversation during the traffic stop." The video tape and transcript of the stop that was available for the Fourth Circuit shows that the extensive interrogation conducted by the Trooper was hardly "casual conversation". Although the Trooper may have used a light tone of voice, his questions were direct and with the intention to cast suspicion on Mr. Porter's career, injury, place of residence, and travel plans. The Trooper questioned Mr. Porter on matters that had nothing to do with where or why he was traveling. This interrogation exceeded what this Court held to be permissible in Berkemer, and from this point on, Mr. Porter was illegally detained in the Trooper's vehicle.

After Trooper Elliott learned that Mr. Porter's license was valid and admonished him for the alleged driving infractions, the Trooper did return Mr. Porter's license and told him to "have a good trip". However, the Trooper then stated "before you go," indicating that the stop was not over and that Mr. Porter was not free to exit the state police vehicle. At this time and while still detained in the Trooper's vehicle, Mr. Porter agreed to a quick "look through" of his vehicle. The

Trooper assured him that he didn't think he was transporting contraband and that he would "be outta here in no time".

This Court has explained that "a person has been seized within the meaning of the Fourth Amendment only if, in view of all the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." Mendenhall, 446 U.S. at 554. Also, this Court has acknowledged that traffic stops "interfere with freedom of movement, are inconvenient, consume time, and may create substantial anxiety." Prouse, 440 U.S. at 657. The "reasonable person" who is unwillingly detained inside a Trooper's cruiser as a result of alleged traffic violations, and as the Court recognizes, might be feeling substantial anxiety, would not realistically feel free to ignore any questions propounded to them by the Trooper especially when they are prefaced with the phrase "before you go." Any other interpretation of this scenario is simply an attempt to circumvent the Fourth Amendment to successfully prosecute the Petitioner.

The Supreme Court of Virginia recently held in Reittinger v. Commonwealth, 260 Va. 232 (2000) that although a deputy had informed a driver that he was free to leave that the questions that followed pertaining to the transportation of narcotics resulted in an illegal detention. The Court stated:

> [a]lthough Deputy Bolen had told Reittinger that he was free to go, we think that the events that transpired immediately thereafter would suggest to a reasonable person that just the opposite was the case. We do not think that a reasonable person, under these circumstances, would have considered that he was free to disregard the deputies and simply drive away. Id. at 237

The Court evaluated the totality of the circumstances and held that the defendant's conviction be vacated.

The totality of circumstances in this case demonstrates that Mr. Porter was still seized during this period of questioning and that this was not a consensual encounter. First, the Trooper ordered the Petitioner out of his vehicle and instructed him to follow him to his cruiser. Before they arrived at the cruiser and despite any probable cause that the driver was armed or dangerous, the Trooper sought Mr. Porter's consent for a pat-down search. While in the Trooper's vehicle, Mr. Porter was extensively questioned as to matters unrelated to his travel plans. At the hearing on the Motion to Suppress, the Trooper admitted that he believed that Mr. Porter could not open the door because of the injury to his right arm. As the Trooper was opening the door for the Petitioner but before he could exit the vehicle, the Trooper specifically stated "before you go" and began to question the driver as to the transportation of

contraband. Mr. Porter was clearly still detained and this additional detention was a violation of his Fourth Amendment rights.

In the Fourth Circuit's Opinion to this case, the Court attempted to convert the purely objective "reasonable person" standard into one of a subjective nature. The Court explained "Porter was relatively sophisticated, volunteering that he knew the law because his father was an attorney." What Mr. Porter believed or said at that moment is irrelevant if the appropriate standard to apply is whether a reasonable person would have felt free to disregard the Trooper's questions and proceed on his way. The District Court correctly stated "[w]hatever the Defendant believed after Elliott told him to "have a good trip," when Elliott stopped him by saying "before you go," the defendant was not actually free to leave nor did he perceive that he was free to leave."

In Royer, 460 U.S. at 501, this Court explained that "statements given during a period of illegal detention are inadmissible even though voluntarily given if they are the product of the illegal detention and not the result of an independent act of free will." Also, this Court has held that contraband discovered as the result of an illegal seizure "must be suppressed as tainted fruit". Florida v. Bostick, 501 U.S. 429, 433-434 (1991).

Any permission granted by Mr. Porter during this detention was simply not consensual non voluntary. Trooper Elliott's extended detention of Mr. Porter clearly exceeded the proper scope of a traffic

stop, the evidence recovered is fruit of a poisonous tree, and the District Court correctly suppressed the evidence.

II. THE OPINION OF THE FOURTH CIRCUIT COURT OF APPEALS IS IN CONFLICT WITH NUMEROUS DECISIONS OF THIS COURT.

The Opinion of the Fourth Circuit Appeals conflicts with numerous decisions of this Court regarding consensual encounters, illegal detentions, and reasonable suspicion to search. As stated above, when this case is compared to the holding in Mendenhall, it is clear that a reasonable person would not have felt free to ignore the Trooper's questioning regarding the transportation of contraband. The facts of this case are very similar to those in Robinette, but in that case this Court did not address the detention and search because the sole question presented Petitioner was whether or not the deputy sheriff was required to tell the driver he was free to leave. This Court held that this notice was not required, but in his dissent Justice Stevens eloquently addressed the extended detention of the traffic stop and its illegal nature. When Justice Stevens' opinion is applied to the facts of this case it is apparent that Mr. Porter was illegally detained when the Trooper sought his consent to search, and therefore, the District Court correctly suppressed the recovered evidence.

In Robinette, Justice Stevens stated that the case presented two questions of law: "whether Respondent was still being detained when the one question was

asked, and, if so, whether that detention was unlawful." Robinette, 519 U.S. at 46. Stevens explained that the driver was still detained at the time of these questions and would not have felt free to walk away from the deputy because "[t]he question itself sought an answer "before you get gone." Id. at 48 Stevens concurred with the Ohio Court of Appeals when it held that "a reasonable person in Robinette's position would not believe that the investigative stop had been concluded, and that he or she was free to go, so long as the police officer was continuing to ask investigative questions." Id. at 49

Stevens also explained that Robinette's speeding was the sole justification for the sheriff's traffic stop of his vehicle, and by the time the driver was questioned regarding narcotics, the traffic stop was over and the further detention was illegal. Id. at 50 He then concluded by stating "[b]ecause Robinette's consent to the search was the product of an unlawful detention, the consent was tainted by the illegality and was ineffective to justify the search." Id. at 51

The facts in this case are very similar to that of Robinette and this presents an opportunity for this Court to hear the issues addressed by Justice Stevens above. Mr. Porter was detained by the Trooper during a traffic stop and no reasonable person would have felt free to ignore the officer's questions regarding the transportation of contraband when they were prefaced with the statement "before you go." The consent granted by Mr. Porter to search his van was the result

of an illegal detention of the Petitioner, and therefore, the Fourth Circuit Court of Appeals erred by overruling the District Court's Motion to Suppress.

III. TROOPER ELLIOTT GREATLY EXCEEDED MR. PORTER'S LIMITED CONSENT TO QUICKLY LOOK THROUGH HIS VEHICLE.

A. STANDARD OF REVIEW

The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of "objective" reasonableness--what would the typical reasonable person have understood by the exchange between the officer and the suspect. Florida v. Jimeno, 111 S.Ct. 1801, 1803 (1991). Objective reasonableness is a question of law that is reviewed *de novo*. United States v. Rich, 992 F.2d 502, 505 (5th Cir. 1993).

B. DISCUSSION

The District Court correctly held that Mr. Porter's consent to "look through" his vehicle was limited in scope and "did not include consent for a search of the kind or degree actually engaged in by Elliott and the team other officers." This Court has explained that "[w]aivers of constitutional rights not only must be voluntary but must be knowing, intelligent acts done with sufficient awareness of the relevant circumstances and likely consequences." Brady v. U.S., 397 U.S. 742, 748 (1970). Mr. Porter only consented to a quick "look through" of his vehicle, and he testified at the suppression hearing that he

understood this "look through" to mean that the Trooper would look through the vehicle to see if there were any problems or discrepancies in plain view. Therefore, the expansive search of the vehicle exceeded the limited consent granted and the evidence recovered by the Troopers should be suppressed.

As stated above, this Court in Jimeno, 500 U.S. at 251 explained that "[t]he standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of objective reasonableness - what would the typical reasonable person have understood by the exchange between the officer and the suspect." Also, this Court has stated that "a search which is reasonable at its inception may violate the Fourth Amendment by virtue of its intolerable intensity and scope." Terry v. Ohio, 392 U.S. 1, 18 (1968) The District Court explained that the Trooper limited the scope of the look through by never using the word "search", claiming that it would be "quick", and that he would have Mr. Porter "out of here in no problems." There is no way a reasonable person would have understood that a quick "look through" that would only take a few minutes would be an extensive search of the vehicle's interior, exterior, and contents by three Troopers and canine.

It is well-settled law that "[w]hen the police are relying upon consent as the basis for their warrantless search, they have no more authority than they have apparently been given by consent." LaFave, Search and Seizure, 3rd ed., § 8.1(c), p. 610, (1996). This Court has stated that "[t]he scope of the search must be strictly tied to and justified by the circumstances which

rendered its initiation permissible." Royer at 500. In addition, the Fourth Circuit has explained that "[a] search conducted pursuant to voluntary consent must be limited to the terms of its authorization." U.S. v. Hart, 944 F2d 902, 903 (4th Cir. 1991), citing United States v. Blake, 888 F.2d 795, 798 (11th Cir. 1989). Trooper Elliott's "look through" of Mr. Porter's vehicle was only made possible by Mr. Porter's consent; however, the Trooper and his interdiction team greatly exceeded its limitations. Trooper Elliott called in the help of two other interdiction team members and they searched the vans interior, exterior and undercarriage. The Troopers rummaged through Mr. Porter's luggage, lifted up floorboard carpeting, and crawled underneath the vehicle. This was a clear violation of the terms of consent and certainly not a quick "look through" as originally described by the Trooper.

The District Court explained that "relying on the representations made by Elliott, the defendant voluntarily consented to a "look through" only. It was a limited consent, and the scope of the allowable search was therefore limited to looking inside the vehicle for anything suspicious or indicative of contraband." The District Court heard testimony from the Trooper and Mr. Porter, observed the video tape of the traffic stop, and properly determined that the extensive search of the vehicle exceeded the consent granted by the Defendant. We respectfully submit that the District Court reached the proper conclusion and that the Court of Appeals erred by holding that the Trooper did not exceed the scope of Mr. Porter's consent.

Even if this Court agrees with the Fourth Circuit that Mr. Porter consented to the Trooper going inside of his vehicle, it should be clear that a "look through" would not constitute the raising of the vehicle's carpeting and crawling underneath the van to inspect its undercarriage. The Fourth Circuit stated that "it was reasonable for Porter to assume that the Trooper would be looking for drugs in hidden areas in his van, not just those in plain view..." It is unjustified to say that a quick "look through" that would have Mr. Porter "outta here in no time" would include the removal of the van's interior carpeting and an inspection of the undercarriage of the vehicle.

The Court then points out that Mr. Porter "reaffirmed his consent even after the officers had removed the carpeting in the van." This is a moot point because the scope of the search had already been exceeded and the Troopers were engaged in an illegal search. You can't conduct an illegal search, find evidence, and then go get a warrant or consent that would justify the discovery. That is simply a violation of Mr. Porter's Fourth Amendment rights. A reasonable person would not have believed that he was consenting to such an extensive search of the vehicle. The scope of this search far exceeded the consent granted by Mr. Porter to "look through" his van, and therefore, the evidence recovered should be suppressed.

CONCLUSION

For the reasons listed above, Mr. Porter respectfully requests that this Court grant this Petition for a Writ of Certiorari, reverse the decision of the Fourth Circuit Court of Appeals, and affirm the District Court's Suppression Order.

ORAL ARGUMENT IS REQUESTED

Respectfully submitted.
SALEEM PORTER

/s/Murray J. Janus
Of Counsel

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APPENDIX A

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

v. No. 01-5013

SALEEM PORTER,
Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Virginia, at Richmond.
Richard L. Williams, Senior District Judge.
(CR-01-272)

Argued: September 26, 2002
Decided: October 29, 2002
Entered: October 29, 2002

Before MOTZ, TRAXLER, and GREGORY,
Circuit Judges.

Reversed and remanded by unpublished
per curiam opinion.

COUNSEL

ARGUED: Vincent L. Gambale, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellant. Murray Joseph Janus, BREMNER, JANUS, COOK & MARCUS,

Richmond, Virginia, for Appellee. **ON BRIEF:** Paul J. McNulty, United States Attorney, Alessandra DeBlasio, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Alexandria, Virginia, for Appellant. Taylor B. Stone, BREMNER, JANUS, COOK & MARCUS, Richmond, Virginia; David S. Rudolf, RUDOLF, MAHER, WIDENHOUSE & FIALKO, Chapel Hill, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

The Government appeals the district court's order granting Saleem Porter's motion to suppress crack and powder cocaine found in his car. We reverse and remand for further proceedings.

I.

On August 22, 2001, three members of Virginia's police drug interdiction unit, Troopers Lee Elliott, David Batkins, and Debbie King, were patrolling Interstate 95 in Hanover County, Virginia in unmarked cars. At approximately 1:45 p.m., Trooper Batkins noticed two white sport utility vehicles, apparently traveling together, one with Georgia plates, trying to speed through traffic. He radioed ahead to advise Trooper Elliott of the vehicles, but Trooper Batkins did not indicate any suspicions that the cars were carrying drugs,

nor did he attempt to stop the vehicles.

Soon after receiving this call, Trooper Elliott observed a white van with Georgia license plates passing him on the left. However, Trooper Elliott admitted that he never saw another car traveling with this van, or a car that matched the description radioed by Trooper Batkins. Nevertheless, Trooper Elliott followed the white van, which, although moving in the normal flow of traffic, was traveling at between 70 and 79 miles per hour in a 65-mile-per-hour speed zone, and switching lanes without properly using a turn signal.

Having observed these traffic infractions, Trooper Elliott turned on his vehicle's lights and an internal video camera, and pulled the van to the side of the road. A videotape recorded the entire encounter and the events set forth below.

Trooper Elliott approached the van and asked the driver, Saleem Porter, for his license, and told Porter why he had been pulled over. Porter explained that he had not driven in a while because of an arm injury he suffered through his construction job. Trooper Elliott asked Porter to accompany him to the trooper's car so that the he could run a check on Porter's license. Porter agreed, getting out of his vehicle without apparent difficulty, mentioning that his arm felt "better right now."

Noting Porter's baggy shirt, Trooper Elliott asked Porter if he could feel Porter's pockets. Porter agreed and Trooper Elliott told him "[t]his is all just voluntary stuff here." Having checked his pockets, Trooper Elliott did not otherwise pat Porter down. Porter then got into Trooper Elliott's vehicle with Elliott.

Trooper Elliott testified that during the next seven minutes he completed paperwork while questioning Porter about various matters, including Porter's job and his injury, his speeding, his current trip, his address, and the vehicle's registration. The trooper then radioed in to run a check on Porter's license. Within another minute and a half, the license check came back clear and Trooper Elliott gave Porter his papers, a warning, but no ticket, and told him to be more careful.

After wishing Porter a "good trip," Trooper Elliott asked Porter if he wanted to be let out of the police car. Porter said that he did. Trooper Elliott reached across and opened the door for Porter, and as Porter was getting out of the trooper's car asked "before you go . . . you don't have any firearms or weapons . . . or money or drugs or anything like that in the car?" Porter replied that he did not: "I make over a half a million dollars a year, and I wouldn't want to jeopardize my life and career." Elliott then explained that he was part of a "special group of troopers" whose job involved drug and weapon interdiction. He told Porter that he often pulled people over with the intention of obtaining permission to search their cars.

At this point, Porter volunteered: "Officer, you can look through the car. I have no problems with looking through the car." Porter also mentioned that he was "familiar with the process" because his father was an attorney in Atlanta, and stated again that "you can look through the car." Trooper Elliott told Porter that it would just be a minor inconvenience, that the matter was "strictly voluntary," and that Porter should sit in the police vehicle while he took a "quick look."

After radioing the other officers, Trooper Elliott informed Porter that backup officers might arrive. He did not tell Porter that the other officers would be participating in the search, nor did he request Porter's approval for their participation. However, Trooper Elliott did tell Porter several ways to get the troopers' attention if he wanted to during the search, and Porter, in turn, told the trooper not to put up the van's windows with the key in the ignition because the car would lock.

Trooper Elliott began to search Porter's van at 2:04 p.m.. Troopers Batkins and King arrived with the drug dog soon thereafter. During the next three minutes, the troopers unzipped bags, opened the rear hatch, looked underneath carpeting, and underneath the van itself.

Trooper Elliott later testified that several factors uncovered during this search aroused his suspicions: the van's odometer was set to the trip function and showed more than 2,800 miles; the total odometer read over 215,000 miles; fast food wrappers littered the van; and the van's interior was in disarray. At approximately 2:08 p.m., Trooper Batkins opened the van's rear hatch, and about 15 seconds later, Trooper Elliott noticed a gap of between 8 and 12 inches in the bottom of the van. He suggested looking under the van but Trooper King said that she should run the drug dog first.

At approximately 2:12 p.m. (eight minutes after the troopers began their search of the van), the dog alerted to the rear of the car. Immediately after the dog alerted, Trooper Elliott went back to his car to speak to Porter, who said, "Officer, I would just like to say this:. . . I just really don't like this, man. I mean, I know I have been cooperative . . . but . . . was this really necessary

Officer?" Trooper Elliott told Porter he had been "great" and that the officers were just exploring what they had found. Porter said "[a]ll right," but the troopers noted that he had become very nervous.

The troopers continued searching the car, and at approximately 2:20 p.m., found a secret compartment. Trooper Elliott then hand-cuffed Porter, telling him he was not under arrest, but they were detaining him because of suspicions about his vehicle. The officers spent about an hour trying to gain access to the secret compartment. At one point, after reading him his *Miranda* rights, Trooper Elliott asked Porter whether he would cooperate, but Porter elected not to discuss the situation. The troopers eventually found approximately three quarters of a kilogram of crack cocaine and one kilogram of powder cocaine inside the secret compartment in the car; they then arrested Porter.

II.

After considering the evidence, including Trooper Elliott's testimony and the videotape, the district court granted Porter's motion to suppress the crack and powder cocaine found in his van. The court found that because Trooper Elliott observed a legitimate traffic violation, the resulting traffic stop of Porter was justified. The court held, however, that the totality of circumstances in the instant case demonstrated that Porter had not consented to the search, and that even if he had consented, the search exceeded the scope of that consent.

The Government maintains that the district court erred both in its assessment of the voluntariness of the search and the scope of Porter's consent. An appellate court reviews a district court's factual findings for clear error and its legal conclusions *de novo*. *United States v. Rusher*, 966 F.2d 868, 873 (4th Cir. 1992). In this case, notwithstanding Porter's understandable attempt to gain the advantage of a deferential standard of review by casting the district court's conclusions as fact finding, the critical facts, all of which the videotape memorialized, are undisputed. Therefore, the district court's ultimate holdings as to the voluntariness and scope of the consent are, as the district court itself properly recognized, "conclusions of law," subject to our *de novo* review. With this understanding, we consider both of these holdings in turn.

A.

Although the Fourth Amendment clearly prohibits unreasonable searches and seizures, and searches without a warrant are *per se* unreasonable unless a valid exception applies, it is equally clear that a search to which a suspect has consented is an exception to this requirement. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). The Government, of course, has the burden of proving that the consent was freely and voluntarily given. *Id.* at 222.

Determination of the voluntariness of consent involves an objective analysis of the totality of circumstances surrounding the consent. *See, e.g., id.* at 227; *United States v. Lattimore*, 87 F.3d 647, 650 (4th Cir. 1996) (en banc). A court must decide, given the totality of the circumstances, whether "a reasonable person in the

suspect's position would have felt free to decline the officers' requests or otherwise terminate the encounter." *United States v. Sullivan*, 138 F.3d 126, 132 (4th Cir. 1998) (quoting *Florida v. Bostick*, 501 U.S. 429, 438 (1991)). In reviewing the totality of the circumstances, we consider the characteristics of the suspect, such as age, maturity, education, intelligence, and experience; and the conditions under which the consent was given, such as the number of officers present, and the duration, location, and time of the encounter. *Lattimore*, 87 F.3d at 650.

As one of its first conclusions of law, the district court held, that "the continued detention of . . . [Porter after the completion of the license check and issuance of a warning] was illegal" and Trooper Elliott was therefore not entitled to request Porter's consent for a search. This conclusion does not accord with well-settled case law. Rather, the Supreme Court has clearly held that the actual motivations of individual officers in stopping vehicles is irrelevant. *Whren v. United States*, 517 U.S. 806, 813 (1996)(noting that precedent "forclose[s] any argument that the constitutional reasonableness of traffic stops depends on the actual motivations of the individual officers involved."). Furthermore, we have repeatedly held that once a traffic stop has concluded, a continued conversation between an officer and suspect can be a consensual encounter if a reasonable person would have felt free to leave. *See, e.g., United States v. Weaver*, 282 F.3d 302, 309 (4th Cir. 2002) ("Circumstances where the citizen would feel free to go, but stays and has a dialogue with the officer, are considered consensual, and therefore do not implicate the Fourth Amendment.").

Indeed, we have held consent voluntary on facts very similar to those in the case at hand. In *Lattimore*, as here, a trooper stopped a suspect and escorted him to his car because of a traffic violation. 87 F.3d at 649. Moreover, as here, after checking the suspect's license and returning it to him, while the suspect was exiting the car, the officer asked if he could search the vehicle. *Id.* Finally, again as here, the suspect orally consented and the resulting search turned up illegal narcotics. *Id.* at 649-50. We found the consent voluntary even though the suspect, Lattimore, later refused to sign a written consent form, because the totality of the circumstances indicated that a reasonable person would have felt free to decline the request for consent. *Id.* At 651. Those circumstances included: the suspect's relative sophistication evidenced by his education, the casualness of conversation engaged in by the officer and the suspect, the time and location of the incident C on a well-traveled highway in the middle of the afternoon, the fact that only one officer was present when the suspect gave his consent, and the fact that the stop was not of inordinate duration. *Id.*

Similarly, in this case, Porter was relatively sophisticated, volunteering that he knew the law because his father was an attorney; Porter and Trooper Elliott engaged in casual conversation during the traffic stop; the incident occurred on a well-traveled highway in the middle of the day; only one officer was present when Porter gave his consent; the stop was not long; and the conversation following the conclusion of the traffic stop lasted only about one minute. *See also Sullivan* 138 F.3d at 133 (holding a search consensual even though an officer repeatedly asked questions about the presence of illegal items in the car, after returning a suspect's license at the conclusion of a traffic stop).

The district court distinguished *Lattimore* from the present case because Trooper Elliott said "before you go" to Porter as Porter was getting out of the car, thus assertedly *requiring* Porter to answer the questions before resuming his trip. This conclusion flies in the face of *Ohio v. Rabinette*, 519 U.S. 33, 36 (1996), in which the Supreme Court held that the consent obtained from an individual after an officer asked "before you get gone: Are you carrying any illegal contraband in your car?" was valid even though the officer did not tell the individual he was free to go. As the Government points out, there is little difference between "before you get gone" and "before you go." Moreover, the Supreme Court has unequivocally stated that no one fact should be dispositive when determining whether a reasonable person would find conditions coercive. *Id.* at 39.

The district court also suggested that the case at hand differed from *Lattimore* because Trooper Elliott knew Porter needed help getting out of the car, and thus Porter was not free to leave before answering the request to consent to a search. However, Trooper Elliott had already opened the door for Porter and Porter had a foot out of the car before the trooper ever made his "before you go" request. At that time, Porter no longer needed Elliott's help to get out of the car.

In sum, our precedent requires the conclusion that Porter voluntarily gave his consent to the search of his van.

B.

As to the scope of the search, the Supreme Court has again established that the appropriate test is an objective one C what would a reasonable person have understood the exchange between the officer and the individual to encompass. *Florida v. Jimeno*, 500 U.S. 248, 251 (1991). Individuals may limit the scope of their consent, but when, as here, a suspect does not expressly limit the scope of the search, the test remains what a reasonable person would believe to be included within the scope of the consent. *Id.* at 252.

In *Jimeno*, the Court concluded that once Jimeno gave consent to search his car without limitation, it was reasonable to search in a paper bag on the floor of the car because the officer informed Jimeno that he was looking for drugs, and a reasonable person would expect to find drugs inside a container. *Id.* at 251. Similarly, Trooper Elliott told Porter that he was a member of a narcotics interdiction unit, so it was reasonable for Porter to assume that the trooper would be looking for drugs in hidden areas in his van, not just those in plain view, as Porter argues. The district court recognized that had the conversation between Trooper Elliott and Porter ended with the trooper telling Porter he was looking for drugs, Porter would have no colorable contention that the search exceeded the scope of his consent. However, because Trooper Elliott told Porter that he just wanted to take a "quick look through" the van, never used the word "search," and told Porter that he would be out of there quickly, the court held that Porter limited the search to a limited look through of his van, and never gave any consent to open any closed or locked part of the van.

There are several problems with this conclusion. First, the tape reveals that Porter specifically told Trooper Elliott not to put the windows up when he was inside Porter's van because the van would lock, indicating that Porter himself recognized that the troopers would need to open various parts of the van in the course of their search. *Jimeno*, 500 U.S. at 251.

Moreover, Porter volunteered his consent several times even after Trooper Elliott had specifically told Porter that he was part of a "special group of troopers" whose "job is to stop the flow of drugs and weapons . . . through the Commonwealth of Virginia." Although Porter could have withdrawn his consent at anytime, he failed to do so. In fact, Porter reaffirmed his consent even after the officers had removed the carpeting in the van, and the drug dog alerted to his rear hatch; at that time, when Trooper Elliott told Porter the officers were just going to see what they had found, Porter replied "[a]ll right." For all of these reasons, we can only conclude that a reasonable person would have believed that the troopers' search of Porter's van was well within the scope of his consent.

III.

For the foregoing reasons, the district court's order granting Porter's suppression motion is reversed and the case is remanded for further proceedings.

REVERSED AND REMANDED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA

v.

SALEEM PORTER,
Defendant.

Criminal Action Number 3:01CR272

ORDER

This matter is before the Court on the defendant's motion to suppress. For the reasons stated in the accompanying Findings of Fact and Conclusions of Law, the motion to suppress is GRANTED.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

ENTERED: November 21, 2001

/s/The Honorable Richard L. Williams
SENIOR UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA

v.

SALEEM PORTER,

Defendant.

Criminal Action Number 3:01CR272

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter is before the Court on the defendant's Motion to Suppress. The Court heard evidence on this motion on November 16, 2001, watched the video recording of the entire stop and search of the vehicle, read the corresponding transcript, and heard arguments on November 21, 2001. After consideration of the evidence presented, the Court makes the following Findings of Fact and Conclusions of Law, pursuant to Federal Rule of Criminal Procedure 12.

A. FINDINGS OF FACT

1. On August 22, 2001, the defendant, Saleem Porter, was driving northbound on Interstate 95 in a white van with Georgia license plates. At approximately 1:50 p.m. the defendant passed through Hanover County, near the 99 mile marker, where Virginia State Police Trooper Elliott, a member of the narcotics interdiction unit, was patrolling the interstate in an unmarked police vehicle. Elliott was working in conjunction with other narcotics interdiction unit members, including Agent Batkins, who was patrolling in another unmarked police vehicle.

2. Agent Batkins radioed to Elliott that two sport utility vehicles had passed Agent Batkins' vehicle and that it appeared to Agent Batkins that the cars wanted to go faster but were being held up in traffic. Agent Batkins did not indicate that he had any suspicion that the cars might be carrying drugs nor did Agent Batkins make any attempt to stop the vehicles. Elliott, who was driving farther north than Agent IBatkins, kept on the lookout for the vehicles described by Batkins.

3. Elliott admitted that when he observed the defendant's van, he never saw another car that seemed to be traveling with the defendant or that matched the description given by Agent Batkins. Additionally, throughout the video recording of the entire traffic stop, Elliott never questions the defendant about another car or mentions that there had been a report of a second vehicle possibly traveling with the defendant. The Court therefore finds that either Elliott mistook the defendant's white van for one of the two vehicles

claimed to have been observed by Agent Batkins or there were never two cars as claimed, and the Court finds that the defendant's car was not traveling as part of a pair of vehicles.

4. After being passed by the defendant's van, Elliott briefly followed the van to pace the defendant's speed. Elliott's patrol car was not equipped with a radar, but he paced the defendant's speed at somewhere between 70 arid 79 miles per hour. Although the defendant was exceeding the posted limit of 65 miles per hour, he was moving with the flow of traffic and at the same speed as three-quarters of the drivers on the road.

5. Elliott observed the defendant change lanes from the left lane to the middle lane and then from the middle lane to the right lane, using a turn signal for two-blinks on the second lane change.

6. Having observed a traffic infraction, Elliott activated his emergency equipment and executed a traffic stop.

7. Even at the time Elliott first pulled the defendant to the shoulder, there was never any intention to treat the stop as a traffic stop. Stating that as part of the narcotics interdiction unit, his "primary job was to stop the flow of drugs into the Commonwealth and through the Commonwealth of Virginia," Elliott explained that "[w]hat we would do in the course of our duties would be to stop vehicles for violations, issue a summons for it or not, [and] try to

get consent to look through the vehicle for any kind of contraband." (Detention Hr'g, Aug. 28, 2001, at 12.)

8. As he stopped the defendant's van, Elliott was in radio contact with Agent Batkins and another special agent, both of whom were traveling farther behind Elliott on Interstate 95. Those agents informed Elliott that they would pull off the road and wait to hear back from Elliott.

9. Elliott approached the defendant's car, asked for the defendant's license and registration, informed him of the observed traffic violations, and directed the defendant to get out of the van and come back to the patrol car. Elliott did not observe any illegal activity within the van, nor did he have any suspicion of criminal activity or reason to question the defendant other than in regard to the traffic violations. Elliott admits that he did not have any probable cause to believe the defendant was engaged in criminal activity, but claims that he observed factors that raised his suspicion, including a high reading on the trip odometer, fast food wrappers m the van, a cell phone, and the defendant's baggy clothes.

10. Before instructing the defendant to get in the patrol car, Elliott performed a pat-down search. Finding no weapons, Elliott put the defendant into the passenger seat of the patrol car. Once Elliott put the defendant into the patrol car, he never let him out, and the defendant was not free to go.

11. Elliott questioned the defendant about an injury to the defendant's arm before admonishing the defendant about his speed and lane changes and inquiring about his address and information about the owner of the van.

12. Before calling the dispatcher to verify the defendant's license and registration information, Elliott questioned the defendant for several minutes about where he was traveling to and from, his plans once he reached his destination, his occupation in Georgia, details about his construction company, how long the defendant had lived in Georgia, where he lived before moving to Georgia, and why he relocated. None of this information was relevant to the defendant's traffic infractions. As Elliott radioed the license information to the dispatcher, he continued to question the defendant about the injury he had received at his construction business.

13. According to Elliott, he was filling out paperwork while questioning the defendant.

14. After the license check came back valid, Elliott noted that the experience was "painless" for the defendant and he returned the defendant's license to him. (Video; tr. at 10.) Elliott again admonished the defendant about his traffic infractions, gave him a warning and told him to "have a good trip." (Video; tr. at 11.)

15. Elliott asked the defendant whether the defendant wanted Elliott to let him out of the patrol car, to which the defendant responded affirmatively.

However, before the defendant could get out of the patrol car, Elliott stopped him saying, "before you go," and asked the defendant whether he was carrying any firearms, weapons, money, or drugs. (Video; tr. at 11.)

16. Elliott then explained to the defendant that he was a special trooper and that it was part of his job to get permission to look through cars that he stops for traffic violations.

17. The defendant replied: "Ummm, you can look through the car, I have no problems with lookin' through the car . . . ." (Video; tr. at 12.)

18. Elliott told the defendant, "this is strictly voluntary," but he did not do so until after be questioned the defendant about possessing contraband, told him that it was part of Elliott's job to get the defendant's permission to look through the car, described it as a minor inconvenience to some people, and told the defendant "I don't think you have anything." (Video; tr. at 12.)

19. Elliott never used the word "search." Rather, he used the words "look through" and told the defendant that the procedure consisted of "takin' a quick look and get you out of here in no problems." (Video; tr. at 12.) Elliott in no way indicated that he planned to do anything more than "take a quick look" (Video; tr. at 12) in the defendant's vehicle, and he specifically emphasized that the defendant would be "outta here in no time" (Video; tr. at 16) and "outta here real quick" (Video; tr. at 17). Given Elliott's representations to the defendant regarding the scope of his request to search

and the statements made by the defendant, the Court finds that the defendant gave very limited consent, agreeing only that Elliott could look through the vehicle. The defendant never gave any consent or permission to open any part of the vehicle. He agreed only to exactly what Elliott requested, a "quick look" (Video; tr. at 12).

20. Elliott radioed to the other officers who had been waiting, and be informed the defendant that another car might pull up behind them in a few minutes because the officers like to back each other up. Elliott never informed the defendant that other officers would be participating in the search, nor did be request the defendant's approval of the participation of the other officers. Elliott instructed the defendant to remain in the patrol car during the search.

21. Elliott and two other officers proceeded to search the vehicle, including opening doors, unzipping bags to view their contents, opening the rear hatch, looking underneath the carpeting in the van, and underneath the van itself.

22. Eventually Elliott noticed a gap between the underneath of the van and the rear floorboard. At this point, Elliott returned to the patrol car to inform the defendant of what he noticed. The defendant stated, "I would just like to say this . . . I don't, I just really don't like this man." (Video; tr. at 16-17.)

23. The officers continued the search, including using a drug dog around the outside of the vehicle. Elliott placed the defendant in handcuffs and later

informed him that he was under investigative detention but not under arrest.

24. The officers eventually discovered a compartment under the floorboard in the rear of the van. After finding the compartment, Elliott formally arrested the defendant and read him the Miranda warnings.

25. The officers spent about one hour trying to open the compartment, eventually succeeding and finding powder cocaine and crack inside.

B. CONCLUSIONS OF LAW

1. An automobile stop is a seizure of a person implicating the Fourth and Fourteenth Amendments and must be justified by probable cause or a reasonable articulable suspicion of unlawful activity. See Delaware v. Prouse, 440 U.s. 648, 653 (1979); United States v. Wilson, 205 F.3d 720, 722-23 (4th Cir. 2000).

2. Elliott observed a legitimate traffic violation by the defendant and the resulting traffic stop was therefore justified.

3. A driver of a vehicle, even if not the owner, has a reasonable expectation of privacy in the vehicle and its contents as long as there is no indication that the driver is illegitimately in possession of the vehicle. See United States v. Rusher, 966 F.2d 868, 874 (4th Cir. 1992). Here, there is no indication that the defendant improperly possessed the van. The defendant had a reasonable expectation of privacy in the van he was

driving, and the Court must determine the reasonableness of the search.

4. In Pennsylvania v. Mimms. 434 U.S. 106, 111 (1977), the Supreme Court held that it does not violate the Fourth Amendment for officers to order a driver out of a vehicle, as a matter of course, once a lawful traffic stop has been made because concern for the safety of the officers and the occupants outweighs any additional intrusion imposed on the driver. Therefore, Elliott was entitled to order the defendant to step out of the van. Moreover, the subjective intentions or thoughts of the officer do not factor into the analysis. What matters is whether the circumstances, viewed objectively, justify the action taken. See Wbren v. United States, 517 U.S. 806, 813 (1996); Ohio v. Robinette, 519 U.S. 33, 38 (1996).

5. "Because a frisk or 'pat down' is substantially more intrusive than an order to exit a vehicle or to open its doors, . . . an. officer must have justification for a frisk or a 'pat down' beyond the mere justification for the traffic stop." United States v. Kakvi, 160 F.3d 164, 169 (4th Cir. 1998). A general concern for officer safety alone is an insufficient reason to justify conducting pat-downs as a matter of course. See id. An officer must be able to articulate a reasonable suspicion of criminal activity and a legitimate concern for officer safety to perform even a limited pat-down during a routine traffic stop. See id. Therefore, although justified in having the defendant get out of the van, Elliott was not justified in performing a pat-down of the defendant. Elliott's claimed observations of a high trip odometer reading, fast food wrappers, a cell phone, and the

defendant's baggy clothes do not amount to a reasonable suspicion of criminal activity. Reasonable suspicion does not depend upon any one factor, but is determined by the totality of the circumstances. See United States v. Sokolow. 490 U.S. 1, 8 (1989). Individual factors ordinarily consistent with innocent travel may amount to reasonable suspicion when considered together. See United States v. Brugal, 209 F.3d 353, 359 (4th Cir. 2000). However, "[t]he articulated factors together must serve to eliminate a substantial portion of innocent travelers before the requirement of reasonable suspicion will be satisfied." See id. The factors noted by Elliott in this case do not rule out a substantial number of travelers, if any, and there was no reasonable suspicion to justify a pat-down search. Rather, the fact that Elliott conducted a pat-down is proof of his intent to extend the investigation of the defendant beyond a routine traffic stop.

6. Terry v. Ohio, 392 U.S. 1, 20 (1968), requires that in conducting an investigative detention, an officer's action much be "justified at its inception and . . . reasonably related in scope to the circumstances which justified the interference in the first place." A traffic stop is considered justified at its inception if an officer is objectively entitled to make it, regardless of any actual motive behind the stop. See United States v. Jeffus,. 22 F.3d 554, 557 (4th Cir. 1994). If officers exceed the scope of a legal traffic stop, any seized contraband must be excluded as "fruit of the poisonous tree." See Rusher, 966 F.2d at 875 (citing Wong Sun v. United States, 371 U.S. 471, 484 (1963)).

7. In defining the proper scope of investigation in a routine traffic stop, the Fourth Circuit has held that after a driver has produced a valid license and registration, "[a]ny further detention for questioning is beyond the scope of the Terry stop and therefore illegal unless the officer has a reasonable suspicion of a serious crime." Rusher, 966 F.2d at 876-77; see also Florida v. Royer, 460 U.S. 491, 498-99 (1983). In this case, Elliott had no reasonable suspicion of criminal activity, as stated in paragraph 5 above, and he exceeded the scope of a proper traffic stop when he continued to detain the defendant for further questioning and to seek his consent to a search after completing the license check and issuing a warning. Since the continued detention of the defendant was illegal, Elliott was not entitled to request his consent for a search.

8. Based on Florida v, Bostick, 501 U.S. 429, 438 (1991), which held that an encounter is considered consensual if a "reasonable person would have felt free to decline the officer['s] requests or otherwise terminate the encounter," the Fourth Circuit has held that a dialogue between an officer and a defendant after the purposes of a traffic stop have been served does not amount to a seizure under the Fourth Amendment unless an officer has restrained the liberty of a citizen in some way. See United States v. Sullivan, 138 F.3d 126, 131 (4th Cir. 1998); United States v. Lattimore, 87 F.3d 647, 652-53 (4th Cir. 1996). This is true even if the questioning occurs after the conclusion of another seizure. See Rusher, 966 F.2d at 877.

9. In Sullivan, the Fourth Circuit held that the totality of the circumstances indicated that the officer's question of whether the defendant had anything illegal in the vehicle was a consensual encounter because it did not include any threats or indication that the driver was being detained, the driver remained in his own vehicle throughout the stop, and the officer had returned the driver's license, which indicated that the traffic stop had concluded. 138 F.3d at 133. Additionally, the Fourth Circuit held that repetition of additional questions was proper because of the defendant's suspicious behavior in responding to the first question. See id. In Lattimore, the driver had accompanied the officer to the patrol car, and the question about illegal contraband was posed while the driver prepared to exit the patrol car. 87 F.3d at 649. The Fourth Circuit held that the totality of the circumstances indicated that the defendant would have felt free to leave or decline to answer the officer's questions. See id. Although still in the patrol car, the driver was not being detained, his license had been returned to him, a citation had been issued, and the officer indicated to the driver that he was free to leave. See id. at 653.

10. The encounter between Elliott and the defendant is distinguishable from the situations in Sullivan and Lattimore because in this case, the defendant's liberty had been restrained and the defendant was not free to go at the time Elliott asked him whether he was carrying any contraband. Whatever the defendant believed after Elliott told him to "have a good trip," when Elliott stopped him by saying "before you go," the defendant was not actually

free to leave, nor did he perceive that he was free to leave. The officer's statement "before you go" and the questions that followed indicated to the defendant that he must answer the questions before being allowed to leave the patrol car and resume his trip. Elliott began the questioning while the defendant was still in the patrol car, he did so after specifically asking and becoming aware that the defendant needed help exiting the patrol car because of his injured arm but before actually letting defendant out of the car, and Elliott prefaced his questions with a statement that affirmatively indicated to the defendant that he was not at liberty to refuse to answer the questions that followed. The totality of the circumstances in this case show that the encounter was not consensual, and Elliott therefore exceeded the legitimate scope of the traffic stop by continuing to detain the defendant.

11. Even if Elliott's request for consent to search was allowed as a consensual encounter, the defendant's consent was limited in scope and did not include consent for a search of the kind or degree actually engaged in by Elliott and the team of other officers. "The standard for measuring the scope of a suspect's consent under the Fourth Amendment is that of 'objective' reasonableness – what would the typical reasonable person have understood by the exchange between the officer and the suspect?" Florida v. Jimeno,. 500 U.S. 248, 251 (1991). Scope is "generally defined by its expressed object." Id. In this case Elliott explained that he was part of a narcotics unit and, had Elliott not said anything more, the defendant could reasonably have assumed the search was for narcotics and would therefore include areas where narcotics

might be found. Elliott did say more, however, and the rest of the exchange between Elliott and the defendant clearly indicates that the defendant understood that any search would be limited in scope and take only a very brief amount of time. Elliott specifically told the defendant that he wanted permission to "look through" the car, that it would be "a quick look and [the defendant would] get [] out of here in no problems." Elliott never used the word "search," and he also specifically stated that he did not think the defendant had any contraband. The defendant responded to Elliott saying, "Ummm, you can look through the car." The entire exchange as recorded on the video, as well as the testimony of the parties, clearly indicates that, relying on the representations made by Elliott, the defendant voluntarily consented to a "look through" only. It was limited consent, and the scope of any allowable search was therefore limited to looking inside the vehicle for anything suspicious or indicative of contraband. He did not give Elliott permission to open any part of the vehicle, nor did he grant permission for other officers to participate. Therefore, even if Elliott's request for consent had not been tainted by the fact that it was beyond the legitimate scope of a traffic stop, the consent granted by the defendant was limited in scope and the search exceeded that for which the defendant gave permission.

C. CONCLUSION

The Court concludes that Trooper Elliott's seizure of the defendant beyond the allowable scope of a traffic stop was unlawful and that it violated the Fourth Amendment. Accordingly, the defendant's motion to suppress will be granted and the evidence seized from the defendant's vehicle on August 22, 2001, as well as any statements he made in response to the impermissible questioning and search by Trooper Elliott will be suppressed.

An appropriate Order shall issue.

Entered: November 21, 2001

/s/The Honorable Richard L. Williams
SENIOR UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

United States of America,
Plaintiff,

v.

Saleem Porter,
Defendant.

3:01 CR 272 - 01

Before:
HONORABLE RICHARD L. WILLIAMS
United States District Judge

MOTION TO SUPPRESS

November 17 and 21, 2001
Entered November 21, 2001
Richmond, Virginia

GILBERT FRANK HALASZ, RMR
Official Court Reporter
U.S. Courthouse
Richmond, Virginia
(804) 916-2248

THE CLERK: Criminal 3:01 CR 272 - 01.

United States versus porter.

Mr. N. George Metcalf represents the United States.

Mr. Murray J. Janus represents the defendant.

Are counsel ready to proceed?

MR. METCALF: United States is ready.

THE COURT: Proceed, Mr. Metcalf.

MR. JANUS: We are here on behalf of the defendant. The record should reflect Mr. Stone is --

THE COURT: What?

MR. JANUS: The record should reflect Mr. Stone of my office is sitting at counsel table with me.

THE COURT: All right.

MR. METCALF: Your Honor, before we begin, knowing your appreciation of brevity, Mr. Janus and I kind of agreed to a general game plan, if The Court finds it appropriate. I intend to put on the initial investigating officer. The evidence will show, Your Honor, that all of the transactions involving the search, consent, et cetera, was videotaped by Virginia State police in a cruiser. intend to play approximately the

first 20 minutes of the tape. The tape is approximately two hours and ten minutes long.

But the first 20 minutes cover the issue of consent, which we think is the basis for the search. Plus, we have some additional aspects of live testimony of the officer with regard to our articulable circumstances giving rise to suspicions in this matter. And we will introduce the tape for The Court's full perusal prior to making its decision, if The Court finds that appropriate.

THE COURT: That makes a lot of sense. I have no problem with that. Is that your basic understanding, Mr. Janus?

MR. JANUS: Yes, sir. I would add, Your Honor, I have a transcript that has been prepared by Crane Snead that I will agree with Mr. Metcalf is not verbatim accurate, but in cases I think it would be helpful to The Court to follow.

THE COURT: How do you get a transcript from a court reporter that is not accurate? Because I saw that Mr. Halasz turn eight shades of red when you suggested that a court reporter would prepare a transcript that wasn't like it came out of the Dead Sea Scrolls.

MR. JANUS: Even Mr. Halasz, when three people are talking at the same time, and it is on the highway and videotaped, it is not like they are from a witness stand four and a half feet from you.

THE COURT: Tell me what judicial forum that is where three people talk at one time. I have been a judge 25 years, and I was a practitioner 25 years, and I never saw that kind of activity going on.

MR. JANUS: Well, it happens in the criminal law area, Your Honor. You practiced basically in the civil law. It didn't happen in that arena. I think this may be helpful to The Court.

THE COURT: Fine. I will take it and read it in due course.

MR. JANUS: Before we start, of course, there would be a motion to exclude witnesses.

THE COURT: All right. All witnesses other than the government's designated representative and the defendant are requested to go to the witness room.

MR. METCALF: I call my first witness, and designate him as the government representative in this matter, Your Honor, Mr. Elliott.

MR. JANUS: Before he takes the stand, I think it may be helpful to The Court if we gave brief opening statements.

THE COURT: Let me hear them.

MR. METCALF: Since I didn't prepare one, I am caught blind-sided.

On August 22nd, at approximately 1348 hours, that is 11:48, Trooper Elliott was north bound on interstate 95.

THE COURT: This was in the a.m.?

MR. METCALF: p.m. 13 -- it is p.m. Sorry. 1348 would be equate to 11 -- 1:45 p.m.

I am incorrect. 1:47 to be exact.

THE COURT: All right.

MR. METCALF: He observed a Mercury mini van, Georgia plates on it.

THE COURT: Am I correct that he is not a part of the traffic unit of the State Police, that he wasn't patrolling, per say, looking for traffic violators?

MR. METCALF: Drug interdiction officer, Your Honor, that's correct.

THE COURT: All right..

MR. METCALF: They wear two hats. He is a Virginia State Trooper first and foremost, especially assigned to the drug interdiction unit.

He observed this -

THE COURT: Let me ask you this. If he observed a car that fits the perfect profile as a drug courier, and that person is driving in a fashion that

would be a model for all motorists to drive at, could he just pull him over and stop him and say, I am with the drug interdiction unit of the Virginia State Police and my gut feelings and hunches tell me that you are one of the people that we are after?

MR. METCALF: He could do it. Would it be valid? Probably not.

THE COURT: Okay.

MR. METCALF: In this particular case, he clocks --

THE COURT: You are saying this is not the scenario that I am faced with here today.

MR. METCALF: No. The defendant was, the officer will testify, observed the defendant speeding, switching lanes without using turn signals, speeds as high as 79 to 80 miles per hour in a 65.

THE COURT: Which road was this on?

MR. METCALF: Interstate 95, north bound, mile marker 99, which is adjacent to Hanover County, or in Hanover County, Your Honor.

THE COURT: All right. All right.

MR. METCALF: Pulls the vehicle over, ascertains the operator to be the defendant. The vehicle is registered to a third person name, out-of-state vehicle, and the current registration is not valid.

The person who owns the car, according to the defendant, now resides in Georgia. It has a New Jersey registration with regard to the registered owner of the vehicle.

He asked the defendant to exit the vehicle and to go back to the squad car, the police car. This is all videotaped. The minute he turns on the blue lights, this internal, computerized camera videotapes everything that occurs. You will see the actual violation, Your Honor.

THE COURT: Okay.

MR. METCALF: As he comes back to the car, he tells the defendant he wants to pat him down. He will tell you why he did that. They get in to the car, and the officer gets the information from the defendant within ten minutes of the actual stop. He has called in the information to the State Police and verified whether this is a valid driver's license, registration, et cetera. And within two minutes of that -- he tells the defendant that the information comes back. He tells the defendant, I am not going to charge you. He gives him a warning, and as he is exiting the car, he tells him he that he is an interdiction officer, and asks if the defendant has any guns, drugs, or currency in the vehicle. Those words, not necessarily in that order. The defendant says, no, he is a law-abiding citizen. And he then says, you can look if you want. The officer takes him up on that. He then calls up the remaining members of his unit, which are further down the road and have stopped awaiting his direction.

The officer then tells the defendant what he is going to do. Tells him if he wants to get -- to get his attention, to beep the horn, but not to walk up behind him on the highway. All this occurs on the side of interstate 95.

The officer then goes around the vehicle, looks in the passenger side, looks in the driver side, and within a few minutes comes to the back of the vehicle, opens up the tail hatch. And he has been trained on this type of vehicle in the past and knows that the distance between the top part of the floorboard and the bottom part of the floorboard should be no more than an inch. He puts his hands on top, puts his hands up under the bottom, and finds an eight or nine inch difference between the two, which raises the aura of a concealed compartment within the car. He then calls for assistance. He asks Trooper King, who is a drug dog handler, to run the dog around the vehicle. And you will see the dog alert on the very area in which he finds this increased area.

They then notify Michael Lessing of the DEA, who is a State Trooper but assigned to DEA interdiction. They await his arrival.

He does not arrive within a reasonable amount of time, and they complete the search. They find -- they lift up the back of the carpeting. There is a piece of plastic that goes across the back that has eight screws in it. That is part of the molding that should hold the carpeting down. When you lift the trunk lid, you find this piece of molding is not attached at all. This is a factor they considered. Also markings of a lot

of use. He will tell you some factors he looks at that are of relevance to him.

They fold back the carpeting, and inside the body on the floorboard is a cut section. Looks like somebody takes a hacksaw blade and cut it out. But you can't open it. It has a securing mechanism therein. This is a trap. And they are familiar, based on training, with traps.

They then take a crow bar and open it a little bit and see something down in this trap. They eventually are able to open it electronically. Find the control wires to it, apply circuitry to those control wires. It opens. And therein is found two items; one of crack cocaine, one of powder cocaine. That is pretty much the way the case will go, Your Honor.

THE COURT: All right.

Mr. Janus?

MR. JANUS: If Your Honor please, I have been in your court at least three times once or twice at counsel table, once sitting in the back when you cited various matters that are coming before the federal court that perhaps shouldn't be. And you addressed me and said, as a leader of the bar, you need to do something about it. My power is limited. Your Honor, I submit this is a classic case of DWB, as it is known in the street, known among defense lawyers, and that is, driving while black. The Court has the authority to do something about it.

The evidence is going to be that Trooper Elliott was not in a Smokey Bear hat, not in a blue and gray uniform, not driving a blue and gray unit, marked "Virginia State Police" on August 22nd, 2001. He was a member of the special team. And it was a team. That with him were two other vehicles being driven by the members of this team. He is given a report, a radio report, that says, there is a car, suspicious white mini van, Mercury, coming up ahead. Looks like it wants to go fast. Not that it is speeding, not that it is weaving. And he picks that up. He doesn't see a speeding car. And sure enough, that vehicle comes in to his view, and he pulls the vehicle over at 1:47.

Mr. Metcalf is not used to military time. But 1:47 p.m., as he says, on interstate 95 north bound.

The vehicle pulls over. He says, you know how fast were you going? The defendant says, no. And one or both of them say, well, I was going with the flow of traffic. And the Trooper Elliott says, yes, three fourths of the cars are going that speed. Said, you didn't give a signal, but you gave half a signal turning over to change lanes. In other words, during the change, which I submit is equally inconsequential. He then asks the defendant Saleem Porter an unusual, contrary to what the people in the uniformed and marked car would do, he being an unmarked car, what I will call a grade B uniform -- marked with State Police, and he has a gun and a badge, but again a different uniform -- asked the defendant to exit the defendant's own vehicle and come back to his car. And the defendant will testify that that is contrary to his experience, because he had gotten a speeding ticket in

Mecklenburg County by a trooper and told to sit in your car, which is the usual way these things happen. He was asked on the way back -- he was patted down. Keeping in mind this was supposed to be a stop for speeding, not, even reckless driving. And he is patted down. I submit that is part of what is going on here, and as has to do with this particular defendant. I submit that this counsel, the DA would not have been patted down nor taken back to the trooper's car. Arid then the trooper interrogates him subtlety and politely, no question about that. Doesn't get the information necessary for a speeding ticket. Says, I need to get information, but then says, where you are going, where you from, what do you do? Why did you move to Atlanta? And this goes on, Judge Williams, for ten minutes before he even radios in to check on the validity of the driving license and registration, both of which were perfectly legitimate.

He then says, after being detained -- which we submit is an illegal detention, illegal seizure --says, I am not going to write you a ticket. Then he says, by the way, I am really on the interdiction team. You don't have any drugs, guns, or other contraband? I concur with Mr. Metcalf. I am not sure of the order. It is immaterial. And he, like any other person, he being the defendant, says, no. And then he says, well, I would like to take a look around. The defendant says, you can take a look through the car. And then the defendant Saleem Porter is detained in the car, not free to leave. And we think there will be evidence that the State Police regulation says that when you are searching someone's car, they are to stand outside of their car to the right. This was not done. This man was

confined in the policeman unit and told not to leave. If you need me, beep the horn. Don't get out. Ask me.

And then we submit that after the ten minutes, he gets the information, as I said, and then an extensive search goes on. And what is significant here at this point for this pretextual speeding stop, lane change violation which he is not going to write a ticket for, he calls up two team mates who are parked sitting a quarter mile behind on interstate 95, back behind a curve out of sight. They immediately pull up. So you have got this one individual with three law enforcement officers, and three different units right there. And then, Your Honor, you will see this tape, which is 20 minutes, an extensive search. And nothing is found initially. It's no look-through. Also, it is significant Trooper Elliott says, this will be take a few minutes, and you will be on your way. I have had lots of people, this won't take very long. And Mr. Porter will testify that he thought the quickest way to leave was to agree to a quick look-through for him to be on his way.

The Trooper will testify that he had no radar gun in his vehicle. We think on cross the Trooper will admit the last speeding ticket he wrote was back in March of 2001. He had not written a speeding ticket, or any traffic violations, since March. This was clearly a stop because this man rose a sixth sense, if you will, a suspicion. I submit he was detained over an hour and 15 minutes, from 1:47 p.m. The tape ends at 3:27 p.m. He never consented. There was no written consents, and never consented to the extensive tearing apart of his vehicle.

At the conclusion of this evidence, Your Honor, I think it is going to be clear as to why this person was stopped. The trooper Elliott will candidly tell you, as he already has under oath at the detention hearing, he admitted he had no probable cause. That he says the best suspicion he had was the trip meter said 2800 miles. The cases specifically say that is immaterial. And he saw fast-food wrappers, which was consistent with anyone traveling on the interstate.

For all those reasons, Your Honor, we at the conclusion of this hearing, after you have seen the full tape, suppress the evidence. We would further move The Court to adopt any evidence, the transcript of the detention hearing, which is attached to our motion.

THE COURT: All right.

MR. METCALF: Call Trooper Elliott, to the stand.

LEE ELLIOTT
WAS SWORN AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

MR. METCALF: Given Mr. Janus' statement about stopping while black, I believe it was, I move to introduce a letter to Mr. Janus of September 24th, 2001 from the superintendent of the Virginia State Police, which provided Mr. Janus with statistics with regard to the interdiction units, and the stops of the various units based on a racial identification. I move that as government's exhibit Q.

THE COURT: It will be received without objection.

BY MR. METCALF:

Q Now, sir, would you state your name and occupation, please?

A Lee Elliott. Trooper with Virginia State Police.

Q How long have you been a trooper?

A Six years.

Q And are you -- were you especially assigned to a specific unit regarding, involving drug interdiction? If you were, when did that occur?

A I was. And my transfer from a regular road trooper occurred, I believe, August 10th where I was formally stationed within the S. 0. D., Special Operations Division of the Virginia State Police, assigned to the Richmond highway interdiction.

Q Now, prior --

THE COURT: August 6 of what year, though?

THE WITNESS: August 10 of this year, Your Honor.

THE COURT: Okay.

BY MR. METCALF:

Q Prior to that, you drove a marked unit; is that correct?

A That's correct.

Q Wore a class A uniform?

A That's correct.

Q Do you need a description of class A uniform, Your Honor, for the record?

THE COURT: No.

BY MR. METCALF:

Q Now, did you engage in drug interdiction while you were not on special assignment?

A Yes, I did.

Q Were you trained with regard to that even as a uniformed class A uniformed officer?

A Yes, I was. Not only I was trained in the six-month basic academy that I went through, that every trooper goes through, but I have also been through an advanced highway interdiction course put on by El Paso Intelligence Center.

Q Now, when you were -- when were you last traveling in a -- what was your original duty station just prior to interdiction?

A Division one, area eight, which is City of Richmond and the county of Henrico.

Q Patrol basically interstate 95; is that correct?

A 95 and 64.

Q Did you write traffic tickets during that time period?

A Yes.

Q Did you also make drug interdiction stops during that time period?

A Yes.

Q All right.

Now, counsel has pointed out in his opening statement that you haven't written any traffic tickets since March of this year. Do you want to explain to The Court why you haven't? According to his opening statement.

A I am not sure of when my last traffic ticket was. If it was in March, I went through also the State Police SCUBA diver, and I have been on the State Police SCUBA team. That was several months worth of training. I was off the road. I went through a general

instructor's school. A lot of training. Then I didn't write nearly as many tickets.

Q Did you write a fair number of tickets before?

A I think I did.

Q And what would you say fair number would be, if you have idea?

A Per week?

Q Yes. Or per month. Or during your career.

A Per week, my average during my career would probably be in the number of 20 to 25.

Q These would be moving violations, I take it, generally?

A Generally.

Q All right.

Now, sir, directing your attention to August 22nd of this year, did you receive a radio transmission from -- well, let me go back. Withdrawn.

Are you -- you are part of this unit. Are other people involved in this unit with you?

A There is a total of five people on the Richmond interdiction team.

Q On that particular day, how many people were you working with?

A The latter half of the day, while we were out working the interstate, there were three of us.

Q They were?

A Myself, Agent Dave Batkins, and Debbie King.

Q Now, did you receive a radio message from Trooper Batkins concerning something he observed?

A I did. Agent Batkins -

Q Excuse me. Sorry, Agent. Sorry.

A Agent Batkins radioed me. I was some distance --

THE COURT: Atkins, or -

MR. METCALF: It is Atkins with a B, Your Honor.

THE COURT: All right. Okay.

THE WITNESS: We were all traveling north bound on interstate 95. I was some distance in front of Agent Batkins. And he advised me some two vehicles had passed him at a -- exceeding the posted speed limit. But soon after they passed him, had got hung up in traffic and had to slow down. But they were making little bits of progress going around vehicles. And told

me to be on the look out for these two cars trying to speed, the best they could, but due to traffic conditions at the time weren't able to. Told me they were coming my way.

Q Give you a description of them?

A Yes, he did. They were two vehicles. One was, I believe both of them he said were SUVs. I could have been mistaken. But both were white vehicles, one an SUV. One of them was a van with Georgia tags.

Q All right.

Now, does out-of-date-tags have any significance to drug interdiction?

A They can.

Q All right. And Georgia tags?

A Georgia tags to me do mean something Georgia is becoming a source state, particularly Atlanta, being a source for the drugs.

Q All right.

Now, two cars traveling at a high rate of speed. Does that have any significance with regard to drug interdiction? Would that have any import to you at all?

A It can.

Q And tell us under the circumstances under which it may be of import to you.

A On numerous occasions a person who is, would be carrying some kind of contraband, narcotics, would have another vehicle along with them as a chase vehicle or a blocker to where for some reason the vehicle carrying the contraband drew some type of police attention, the chase vehicle, the party traveling with them could do some kind of violation to draw attention away from the vehicle with the narcotics or contraband. Bring attention to the chase vehicle.

Q Are you trained with regard to these type of factors in your drug interdiction training?

A Yes, I am.

Q Is that something that had been discussed as a potential factor?

A Numerous times.

Q All right.

Now, sir, did you see any vehicle or vehicles that drew your attention, and were these the vehicles, as far as you knew?

A I only saw the one vehicle.

Q What was that, please?

A A white Mercury Villager with Georgia plates.

Q What drew your attention to this vehicle, either it being a white Mercury Villager, or what, if anything, it had done?

A I was on the look out for a white vehicle speeding. And sure enough, I could see in my rear view mirror a white mini van traveling at a high rate of speed pass me. I was in the right lane. The vehicle passed me in the left lane.

Q Were you operating a normal state trooper blue and gray with bubble gum machine on top?

A No.

Q What were you operating, please?

A My vehicle is a 20000 Chevy Impala. It is green in color, and there are no police markings on it. It has got tinted windows.

Q Undercover car?

A That's correct.

Q How were you attired?

A I wear what we call a B. D. U. uniform. It is a kind of utility work uniform, a work uniform.

Q Blue patch on shoulder, gun?

A You have your nylon web gun belt with all the same things as if in a class A. You have a baseball cap. All of the same trooper patches and the badge.

Q All right.

Now, how fast were you traveling when this -- when you saw this vehicle? And what did you do? And tell us what you saw it doing when you followed normal procedure, please.

A I was traveling 65 miles an hour in the right lane. The vehicle passed me in the left lane. I changed to the left lane to get behind the vehicle. Passed the vehicle at 70, at 76 miles per hour in a posted 65 mile per hour zone. Vehicle changed from the left lane to the center lane without using a turn signal. The vehicle then changed lanes from the middle lane to the right lane. And after he got about halfway or three quarters of the way in to that lane change, he cut on his turn signal a couple blinks.

Q What activates your camera?

A Me.

Q You flicked the camera on at some time during this time period?

A I believe it was right after he changed from the left lane to the center lane is when I activated my camera.

Q Have you reviewed the videotape of what went on that day?

A Yes, sir.

Q And did you review it again today? And I am showing you a tape. Is this the tape that you reviewed?

A That's correct.

MR. METCALF: Your Honor, I think it would be appropriate at this time to play the tape. One picture is worth a thousand words.

MR. JANUS: Could the .defendant sit in the jury box so he can observe?

THE COURT: Sure.

It is called an on — button.

MR. METCALF: Thank you, Judge.

(Tape being played)

MR. METCALF: Can you hear that at all, Judge? This is also audio, Your Honor.

(Tape being played)

MR. METCALF: 937 is you?

THE WITNESS: Correct.

MR. METCALF: For The Court's edification, the date and time are located up in the right hand corner. That is a 24 hour clock.

(Tape being played)

Is this when you notified the other unit?

THE WITNESS: That's correct.

BY MR. METCALF:

Q Is this when you are beginning to conduct your search? It is a 1403 or 1404?

A That's correct.

(Tape being played)

Q What are you looking at at this stage?

A There are some small kinds of like overnight type bags in the passenger compartment, like toiletry type bags.

(Tape being played)

Q Referring to the automobile at that stage?

A Yes, sir.

(Tape being played)

Q What are you doing at this time, still searching the bag, sir?

A That's correct. Just searching the various items in the passenger compartment.

Q Who is the person in the picture at this time?

A That is Agent Batkins at the driver side door.

Q Is this you in the picture, sir?

A That's correct.

Q That isn't good. What are you talking about?

A That void, eight-inch void that is not supposed to be there.

(Tape being played)

Q If I might stop it a second, Your Honor.

Your Honor, I will stop it just a second.

I want to ask a few questions, and then go back to the tape a moment.

THE COURT: All right.

BY MR. METCALF:

Q Trooper Elliott, while the tape is informative, things are going on that are, is not revealed in the tape.

When you walk up to the vehicle, the person identify themselves to you. Is that person present today?

A Yes.

Q Point him out for the record.

A Orange jacket.

Q Did anything unusual about the interior of the car arouse your suspicion any?

A Did. I noticed several, what I call indicators in the vehicle.

Q What were those, please?

A Right when I approached the car I noticed the digital odometer, the dashboard area of the car was set on the trip function. And even the trip function was up. It was 2,800 some odd miles.

Q Have you had any training with regard to that aspect of -- could anybody have it happen? But is there relevance? Would you tell the relevance to The Court to you, based on your training.

A In my training, when a vehicle is used for transporting narcotics they get lots of miles on it, unusually high amount of miles, hundreds of thousands of miles on a vehicle, which normally, normal every-day- driving you don't get that many. And keep it on the trip function to try to hide that.

Q Did you switch it from trip to find the actual mileage on the 1994 Mercury?

A I did.

Q What was that? Do you recall?

A The actual mileage was in the neighborhood of 214 some odd thousand miles.

Q 215,390 miles?

A Sounds right.

Q Did you take a picture of the odometer?

A I did.

Q I had not marked this as an exhibit, Your Honor. Just a second. I will put a mark on it.

THE COURT: All right.

Q Call it government exhibit R, Your Honor?

THE COURT: Okay.

Q Do you recognize what is depicted there?

A That is the picture I took.

Q All right.

Now, why is it that your training and experience says vehicles with these might be used for running drugs, have a lot of mileage on them?

A Well, a vehicle that has had success in running drugs, as you put it, which might have a trap or a compartment in it, that they have made successful trips from point A to B, they used the vehicle a lot. They take it from point A to point B, deliver that load, either take currency or narcotics back to another location, and the vehicle is constantly on the move driving back and forth.

Q Is this taught to you as part of the training that you received as a drug interdiction officer?

A Yes.

Q Now, are these leisurely trips from point A to B?

A No.

Q Are there other factors indicating, might have indicated that this was not necessarily a leisure trip, beyond the speed of the defendant?

A Yes. The presence of fast food wrappers in the car and general disarray of the vehicle. A lot of stuff laying in the passenger seat. That, to me, brings my attention.

Q Did the defendant tell you who the car was registered to?

A He said it was registered to a friend.

Q All right.

And did he tell you who that friend was, or how he came to be in possession of that vehicle? How the defendant came in to possession of that vehicle is my question. Sorry.

A She let him drive the car. I can't recall if he had not been driving recently, for approximately six months. He had to be chauffeured around by his housekeeper.

Q And that was because --

A Of an injury he received.

Q Did he tell you the nature of that jury?

A Yes, he did. He said that he received that injury on a construction sight by a nail from a gas, power nail gun. A nail shot through sheet rock in to a nerve in his arm.

Q He had not driven -- that was the explanation as to why he was having the difficulty driving in this fashion?

A Says he was out of practice.

Q He told you -- how much did he tell you? He told you the nature of his business, and told you he made half million dollars a year; is that correct?

A That's correct.

Q This was an older vehicle?

A 1994.

Q All right.

How – was his attire and this vehicle commensurate, in your view, as a drug interdiction officer, with the alleged income that this individual made?

A Atypical of someone who makes half a million dollars a year, in my opinion. At least, one, own their own vehicle, not have to borrow somebody else's 1994 Mercury Villager, to make a trip from Atlanta to New Jersey.

Q And the reason for this trip from Atlanta to New Jersey was for his grandmother's birthday and daughter's previous birthday; that's correct?

A That's correct.

Q Do you know if he brought presents for these individuals?

A Nothing was in the vehicle.

Q All right. .

Now, I may have asked this question. Was there fast food wrappers all in this vehicle?

A Yes, there were.

Q Now, when you went to the vehicle, you opened up the bags on the inside; that's correct?

A That's correct.

Q You went around to the back, and you opened up the back. Was there something back there, if anything, that aroused your attention?

A Yes. There were. There were, if you are standing at the rear of the mini van and you open up the latch where the locking mechanism from the raisable part and the stationary part, the bottom, there is a plastic molding along that right above the bumper that was not, first of all, not held down with any, I believe it was eight either clips or screws that were designed to hold it in to place. And the side moldings next to it showed signs that that piece had been removed multiple times. They had nicks and cuts in the moldings on either side of that piece of molding.

Q Are you trained to look for specifically that?

A Yes, I am.

Q And are you trained to look to see if something is held down, whether it is factory type of equipment or non factory?

A That is a major indicator to me. I look for non factory screws. If every screw in the car is a black screw with a little plastic molded cap on it that matches

the interior color of a vehicle, and then you have on one door panel silver screws from Lowes, that is a, at least to me, somebody for some reason has been inside that door panel.

Q At some time did you take photographs of this vehicle subsequent to your search?

A Yes.

Q I will show you exhibit E, F and G. With regard to your testimony just elicited, tell His Honor if you recognize the scene in these photographs, and what the scene therein depicts, please.

A The exhibit E is a view of the rear view of the vehicle after bags had been removed. Of the rear plastic strip in place.

F is the same picture with the rear plastic strip removed.

Q What did you have to do to remove that strip?

A Simply lift it up.

Q All right.

I want to show you H real quick, please.

A Exhibit G is a picture of some nicks and cuts in the side molding.

Q Would you point them out? Turn the photograph to The Court and show where they are. For purposes of the record, which side of the photograph they are on, just for The Court.

A The nicks and cuts are on this upper molding right here. And these two pictures are the same, except for this plastic molding piece here on this picture is in place. On the other picture it has been picked up and set on the car.

Q When you say this picture, you have to refer to exhibit numbers.

A E it is in place, F it has been picked up and set on the car.

Q All right.

The next photograph I showed you.

A Exhibit H is the two bags that were in the vehicle. There is a little mesh netting luggage holder type.

Q The long, black, gray piece of material is --

A That is the same molding that has been removed from the vehicle.

Q All right, sir.

Now, once you removed that, what did you then do?

A Rolled the carpet back.

Q What did you see?

A I saw a white flooring, and on the right portion of the white flooring I saw what appeared to be an access door.

Q Had you had the drug dog run around before all this occurred?

A Yes, I had.

Q All right.

Now, if I might, I would like to --

THE COURT: All right.

(Tape being played)

BY THE COURT:

Q Who are you talking to?

A Trooper King.

Q Trooper King?

A The canine trooper with our team.

(Tape being played)

BY MR. METCALF:

Q What does this indicate to you, sir?

A Alert on the vehicle.

Q Where?

A On the rear portion.

Q Trooper Elliott, after the dog alerted, did the defendant at any time say he didn't want to go further?

A No, he did not.

Q Right. His demeanor, I take it based on what you said in the tape, changed?

A Correct.

Q Was he in a place where he could see what the dog was doing?

A His view was the same as that camera's view.

Q Now, there came a time later in the day that you already testified to opening up the, taking the piece of plastic out, rolling the carpet back and you found something; is that correct?

A Correct.

Q I want to show you exhibits I and J and ask if you recognize the scene depicted therein, sir.

A Exhibit I is a picture of the rear portion the cargo area of the mini van with the carpet rolled up. And it is hard to see, but a view of the access door.

Q All right.

Now, in order to get that carpet rolled up, you simply had to pick up the piece of plastic; is that correct?

A That's correct.

Q Not unscrew it or anything?

A No, sir.

Q All right.

And the other photograph?

A Exhibit J is the same general picture as the cargo area with the carpet rolled up, except in this picture the rear access compartment is pried up a small amount with a pry bar found in the cargo area.

Q In general terms, after you found this compartment, what did you do with regard to further investigation? Did you contact anybody what went, just in general words --

A After I found the door, I was a hundred percent sure it was an access door, I could jiggle with my hand, and it moved independently from the rest of the floor of the vehicle.

And I pried it up a little, and I could see that it was a controlled by an electronic hydraulic inside of the compartment.

We made some calls. We made a call to my sergeant and the other team members who were not present, who were back at our office doing paper work. We also put in a call to the DEA, to Mike Alessi.

Q Mike Alessi is a more experienced, I take it. Why did you call Mike Alessi?

A He is a very experienced trooper that is assigned to the DEA task force. He is very experienced in highway narcotic interdiction.

Q All right.

And I take it a period of time passed; is that correct?

A Correct.

Q What was going on with the defendant during this time period, and what, if anything, did you do with regard to talking to him, et cetera?

A I, after the dog made an alert on the vehicle, we told Mr. Porter what was going on. Told him the dog alerted to the vehicle, and that we were going to detain him and the vehicle for further investigation. It was after I rolled the carpet back, actually found the door, it was then we placed Mr. Porter in handcuffs for investigative detention. I told him more than once that

he was not under arrest, but we had found something on the car that was certainly suspicious, and I believed it to be a compartment that carried contraband. And for our safety, I was going to place him in handcuffs and leave him in my vehicle. And that is what I did.

Q Had you had training on a similar type vehicle recently with regard to what it should look like and what it shouldn't look like?

A Just within a week of this, of less than a week prior, we looked at the identical compartment on an almost identical van.

Q Is this something that is installed by the factory, to the best of your training and training?

A No, it is not.

Q All right, sir.

Now, did there come a time when you were able to open this compartment? And how was in a achieved?

A It is. We waited for my sergeant and other team members to get there. We had located some wires. And through my experience, and with these type of compartments they are electronically opened by some switches from the vehicle which turn on the defroster and windshield.

Q A combination?

A Some sort of combination to do, to get the compartment opened. We looked for small toggle switches or something that might be obvious. Couldn't locate any. We found non factory wiring coming out of the general vicinity of this where that access door was, which led over to the side of the vehicle. A wire that was wrapped in electrical tape and painted white. We had -- instead of trying to figure out the combination to get in the vehicle, we can snip the car. We have pig tail wires to hook up to the battery, put power to the hydraulic side of the wire that we located from the compartment. If it makes a noise and it doesn't open, you switch your wires and the compartment opens right up.

Q Did that happen in this case?

A That is exactly what happened.

Q Had you pried it open previously, had you not, sir?

A I had pried it open a small amount.

Q How did you do that?

A The reason I pried it open is because under the carpet there was a pry bar there. I saw the access door, and under the carpet there was, it was a small pry bar. I believe part of that vehicle's jack. I thought since the pry bar was there, the pry bar was used to pry the door open. And that was how you gained access. I used the prior bar a little bit. I could look in and see it was

controlled with hydraulics, so that is as far as I pried it open.

Q Could you see what was in there?

A I could see a brownish plastic grocery bag.

Q All right, sir.

What action -- once the hatch was opened, what did you find in there?

A That brownish plastic grocery bag.

Q What was inside of it?

A What I believed to be kilo—shaped brick of powder cocaine inside a clear vacuum-sealed bag.

Q Anything else?

A There was another clear vacuum seal.

MR. JANUS: I think this is relevant to the case on the merits, but adds nothing to the search.

THE COURT: But there was contraband.

Q Yes.

THE COURT: Yes.

Q Now, you seized what they had; is that correct?

A That's correct.

Q I will show you exhibits K through P. And would you tell His Honor what those are, please?

THE COURT: What are the numbers?

Q K through P, Your Honor.

Refer to the exhibit number and tell His Honor.

A Exhibit A is a close up picture of the compartment as I pried it up with a pry bar a small amount.

Exhibit L is a picture of the compartment after we opened it up using the hydraulics, and a view of the grocery bag inside.

Exhibit M is the same picture from a different angle.

Exhibit N is a close-up of the compartment opened, with the contraband. Everything been removed from the brown plastic grocery bags.

Exhibit 0 is the contraband in two evidence bags.

And exhibit P is the best I could do with undercarriage shot of the car with the heavy dark over spray or the sealant under the vehicle, and gravel from the road that was stuck to it.

Q Did there come a time, which we don't have a picture, which you looked under the vehicle? Maybe you did look under the vehicle?

A I did.

Q What did you do when you looked under there?

A I saw -- these compartments are hard to spot, even when you are looking directly at the vehicle. One of the give aways is if you could realize what the bottom floor of the cargo --

MR. JANUS: I don't think it is responsive. He said what did he see. It is not relevant if he looked after he already entered into the compartment.

THE COURT: Just answer his question, Trooper.

BY MR. METCALF:

Q Did you look before you went in to the compartment, or after you went in to the compartment?

A Well before.

Q Okay. What did you see that aroused suspicions, if anything?

A One, a doughnut spare tire, which I did not believe went with that vehicle.

Q All right.

A Two, I did not see the rigid style metal that is typical of the floor of the vehicle. Instead I saw -

Q Reinforced type?

A Correct. Has little bumps in it along the way. Instead, I saw a flat piece of metal covered with this under spray.

Q Now, when you say under spray, is it called under coating in automobiles?

A That's correct, under coating.

Q Anything unusual as far as you were concerned about the under coating?

A Yes. It seemed to be extremely heavy, heavy to the point where debris from the road flew up and was stuck in to it.

Q Now, for purpose of the record let me show you exhibit A through D. And just tell us what these are photographs are, please.

A Exhibit A is a front view of the subject's car with the headlight out.

Exhibit B is the passenger seat of the vehicle with numerous objects in it.

Exhibit C is a view from the sliding door on the mini van.

Exhibit D, delta, is a view of the rear of the mini van with the hitch or the hatch closed.

Q Move for purpose of the record to introduce A through whatever the last one is, Your Honor.

THE COURT: Received.

MR. METCALF: No further questions at this time.

THE COURT: All right.

Any cross examination, Mr. Janus?

CROSS EXAMINATION

BY MR. JANUS:

Q Yes, Your Honor.

Good afternoon, Mr. Elliott.

A Good afternoon.

Q On August 22nd 2001 you had only been on the interdiction team a little less than two weeks; is that correct?

A That's correct.

Q You were driving an unmarked car, you said?

A That's correct.

Q You were wearing a blue-colored fatigue uniform or work uniform as opposed to the formal blue and gray; that's correct?

A That's correct.

Q But you were wearing a side arm and badge and mace, or pepper spray, excuse me?

A I had my utility belt on with all those items on there, yes.

Q Didn't have radar equipment in your car, did you, sir?

A Not in that vehicle.

Q Isn't it true, sir, that you had not written a traffic ticket since approximately March 24, 2001? And I will hand you copy of your ticket, most recent tickets.

The last one is the most recent, Mr. Elliott.

A I guess that seems probably about right.

Q Now, sir, you had not written a traffic ticket from the time you had been on the interdiction team member until August 22, had you, had you either, sir?

A I didn't write a traffic ticket on August 22nd either.

Q Between that time, up to August 22, you had not written a traffic ticket, had you?

A That's correct.

Q You are familiar with the state police training manual that are given out to all the troopers, aren't you, sir?

A Yes, sir.

Q Isn't it correct, sir, that when approaching a vehicle police shall scan the interior occupants for any weapons or other contraband?

A Certainly.

Q Did you do that in this case?

A Yes, sir.

Q Didn't see any weapons or contraband, did you?

A No, sir.

Q Then you request the driver's license and registration card; isn't that correct?

A Yes, sir.

Q You did that in this case?

A Yes.

Q Nothing irregular about his driving license, was there?

A No, sir.

Q And there was no stolen vehicle shown up on registration card or anything of that nature, was it, sir?

A No.

Q Are you aware, sir, that in the training manual it says, initial contact shall be kept to a minimum to reduce unnecessary delay and/or intrusion; however, sufficient time should be taken to check the necessary items?

A Yes. No, that sounds right.

Q Would you look at it and verify that. That is correct, isn't it?

A That is correct for memo 97 - 15.

Q We move to enter that as defendant's exhibit.

THE COURT: It will be received without objection.

BY MR. JANUS:

Q Are you aware, sir, once people agree to let you look through the car, you were to ask them if they

mind stepping out and stand to the right side so they do not get stuck in traffic?

A I have never heard of that, or even ever heard it mentioned.

Q Would you agree, sir, after looking at it, this is an outline from the state police instructions or manuals?

A I will not agree this is from a manual. This appears to be from some sort of an outline or syllabus to a class that I was taught.

Q Were you familiar with that doctrine, they should get out of the car, and stand to the right for safety purposes?

A Absolutely not.

Q Your Honor, we move to enter this as defendants two, even though he is not familiar with it, consistent with the government's response in letter to me. I think this has the same dignity. I represent this came as a result of a request and subpoena.

THE COURT: All right.

I will provisionally let it in, subject to being backed out if there is no basis for it.

BY MR. JANUS:

Q Getting back to the original information you had, the first contact, that would have been Agent Batkins that radioed to you; is that correct?

A That's correct.

Q And he told you at that time that there were two vehicles that appeared to be going fast; isn't that what he told you?

A I don't recall verbatim what he said, but --

Q Well, do you recall testifying at the detention hearing in this matter on August 28, 2001?

A Sure.

Q Would you agree at that time when you were asked what information you had that you were told that two vehicles appeared to be going fast?

A I would agree to that.

Q Did he -- you didn't recall at that time whether one of the plates had Georgia tags on it or not. Do you recall today specifically whether you were told, look out for a white vehicle with Georgia tags, or just a white SUV?

A It was two vehicles he told me about, and I believe one of the vehicles had Georgia tags.

Q Did he identify the drivers as, one of them, African American?

A No, he did not. Did not give me any information about anybody in either vehicle.

Q Said two white vehicles, SUV?

A Correct.

Q Never saw a chase vehicle, as you described it in direct examination, did you, sir?

A When the car came by, it was, was just the white van.

Q With respect to the license plate, you said Georgia was significant to you because Atlanta is a source city; is that correct?

A Yes, that is an indicator.

Q Florida license plates are indicators, aren't they, sir?

A Most definitely

Q And Miami is a source city?

A That's correct.

Q Wouldn't it be fair to say, sir, there were 45 different source cities in the United States, including Norfolk, Virginia, Atlanta, et cetera?

A I wouldn't consider Norfolk a source city.

Q Wouldn't it be fair to say that there are many source cities in this country? More than Atlanta?

A Atlanta is one of several.

Q Now, sir, did you receive any information about the second vehicle as to what kind it was, what kind of license plate it had, or anything of that nature?

A It was a white SUV. That is all the talk we had about that vehicle.

Q Sir, with respect to the 215,000 miles on the odometer, you never checked that until after you had concluded your search; isn't that correct?

A I believe that odometer was checked prior to the running of the dog.

Q It wasn't checked before you asked if you could look through the car?

A No.

Q Did you physically touch the button to turn the trip odometer?

A At one point I did. I think it had been done by someone else before I did it.

Q You certainly didn't have permission to do anything specific like that, did you, sir?

A It wasn't done until later.

Q As the tape indicates, it took you approximately 12 minutes from the time of the stop at 1347 until some time after 1412 or so to check the license, check the driver's license, and registration?

A That sounds right.

Q Usually for writing a ticket an individual is advised to remain in their own unit while you radio in to see if there are any irregularities about the license, and then go back and give them a summons, if that is your decision; isn't that correct?

A That is not my standing operating procedure ever since I have been with the department.

Q Would you acknowledge that is the standard operating procedure for most troopers, to have people stay in their car?

A No, sir, I would not.

Q As you have said, you don't pat down people that you are going to write a ticket for changing lanes, or even speeding, do you, sir?

A I do.

Q Every person you stop for speeding?

A No, not every person.

Q If you stop me in my lawyer suit and Mercedes, wouldn't pat me down if you were going to give me a speeding ticket, would you?

A If you were up, going to get in my vehicle and you had that jacket on, there would be discussion to what you had in your pockets at the very least before you entered my vehicle.

Q Mr. Porter told you he didn't have a gun before you patted him down, didn't he?

A I didn't ask if he had a gun before I patted him down.

Q A weapon, you said he said he didn't have a weapon?

A I believe.

Q He didn't have a weapon, did he?

A No.

Q You had not seen any weapon in the vehicle, had you, sir?

A No, sir.

Q Matter of fact, even with extensive search you never found any weapons, did you, sir?

A No.

Q Never found contraband, except in this compartment that was pried opened, and then that was pried open, and then electrically opened, you never found contraband in any other part of the vehicle?

A I wouldn't necessarily say that.

Q Well, tell me what -- tell The Court what contraband you found other than that in that compartment?

A After the dog -- I didn't find any contraband until after the dog alerted.

Q Now, sir, tell us about this pry bar. Was that like a small crow bar where you put it in to the compartment and pried it up physically?

A The metal, the small, black metal tool I think comes on these type vehicles that would, you stick in to the jack, one end, I believe, had the lug wrench. That is what it was.

Q You had told Mr. Porter that he was to remain in your car and not leave. If he wanted you, to beep the horn; is that correct?

A I don't believe I hold him to remain in my car and not leave. I told him if you wanted to get my attention, to honk the horn or roll down the window.

Q You didn't want him to leave the vehicle wandering down the side of the road while you were doing this, did you sir?

A Hopefully he wouldn't have wandered off. He was certainly free to get out if he wished to.

Q You will acknowledge if you had previously, that up until the time that you started searching his vehicle, you had no probable cause at that point, did you, Trooper Elliott?

A I believe I had indicators and reasonable suspicions that I was building on.

Q Do you know what probable cause is? You have been instructed in that in your training, haven't you, sir?

A Yes.

Q You know you didn't have probable cause before you started searching his car, don't you, sir?

A Technically I probably had not reached the level that you are indicating.

Q Now, sir, at one point you had three Virginia State Police sworn officers at the scene, and three different units; is that correct?

A That's correct.

Q The other two troopers had their side arms, both King and Agent Batkins; is that correct?

A That's correct.

Q Was there any discussion among you about keeping Saleem Porter in investigative detention, in handcuffs or otherwise, and putting a trooper at the side of his vehicle and then going and getting a search warrant? Was there any discussion about that? Was there discussion about keeping Mr. Porter in investigative detention?

A There was discussion about putting Mr. Porter in handcuffs. There was also discussion about having one of us posted by Mr. Porter's side. But there was no discussion about going to get a search warrant.

Q From your experience as an officer, how long would a search warrant have taken you to go to the Hanover magistrate?

A To go to the Hanover magistrate and get a search warrant?

Q Federal, Hanover, what have you. 40 minutes?

A That is a total guess. Forty minutes would probably be a record.

Q Now, sir, certainly after Mr. Porter was placed in handcuffs, he was not free to leave, was he, sir?

A That's correct.

Q A speeding charge in the Commonwealth of Virginia is what is known as an infraction, isn't that correct?

A Traffic infraction.

Q Lane change is likewise known as an infraction; isn't that correct?

A That is correct.

Q The way those offenses are normally charged is by taking a summons book and handing a summons to the alleged offender; isn't that correct?

A That is an option.

Q Both of these can even be paid in advance; isn't that correct?

A They can.

Q You will acknowledge that you told Mr. Porter that when you said, I am an interdiction officer and I would like to take a look in your car, you said, this will just take a minute, and you will be on your way. Words to that effect? Didn't you?

A Something to that effect.

Q Did you also say, I am quoting, quoting your language, "we will get you out of here real." Isn't that your exact language from the detention hearing?

A I am not sure when I said that line, so I don't know how to comment.

Q He wasn't out of there real quick, was he, sir?

A Absolutely not.

Q What were his exact -- there was no written consent that you asked him to execute, was there, sir?

A No, sir, I did not.

Q What were his exact words that you construed as permission to search? Do you recall?

A His exact words were -- I guess I won't be able to repeat the exact thing he said, but, go ahead and look through the car. I come from, I am a law abiding citizen in the 40 to 50 percent tax bracket.

Q Did he also say, you can look through the car?

A I think I said what I believe he said.

Q And he never gave any express or implied consent for Special Agent Batkins or Trooper King to look through the car, did he, sir?

A I believe he did.

Q Well, did you go back to him and say, I have got two more of my team members, and they are going to search as well. You didn't do that, did you, sir?

A I told him that there was going to be some people walking up. He knew there was going to be more team members there.

Q You never specifically asked, is it okay if they look through the car?

A Specifically, no.

Q Now, sir, you mentioned that you never saw any birthday gifts, if you will. You went, or one of the other agents went through his duffle bag and two other pieces of luggage; isn't that correct?

A I would say so.

Q You recall three large, maybe three and a half by four feet duffle bags of luggage that were in the back of the vehicle?

A I recall small toiletry type bag in the passenger compartment some place, and in the rear cargo area I recall a large duffle bag, and then like a hanging clothes bag.

Q Do you remember a third bag as well?

A I don't remember it, but that is possible.

Q Remember being blue in color?

A Dark blue, maybe.

Q Yes, sir.

A Yes, sir.

Q Did you go through a detailed search of those pieces of luggage?

A I don't believe I did.

Q To the best of your knowledge, no law enforcement personnel found any contraband or weapons in any of those?

A No, sir.

Q The sergeant that responded to the scene would have been Sergeant Lambert; is that correct?

A That's correct.

Q With respect to the item that was presented to Judge Williams as defendant's exhibit number 2, did you go to a lecture on September 4 of 2001 titled Criminal Interdiction Operation Alert? Do you recall that, sir? September 4, 2001? Which would have been about two weeks after this stop.

A I don't recall.

Q Could you have been read at that time the language that I read to you verbatim, once they agreed and asked if they minded stepping out to the right hand side, does that refresh your memory at all?

A Still very unusual. I having never heard that. I think I would remember it.

Q You weren't taking notes that day?

A Yes. I guess not.

Q If I could have just a minute, Judge Williams.

THE COURT: All right.

Q One last area.

Does this refresh your memory, sir, as a memorandum dated September 4, 2001, as being a written outline of perhaps a video you saw?

A I believe I know where there came from now.

Q Okay. Tell me where it came from.

A This came from a class that was presented at Fort Picket as part of an urban policing. I don't recall the date. But I did attend the urban policing school, and I do know Special Agent J. C. Myers, and he did teach a class down there. That is the only reason why I think that this is where this came from.

Q Would defendant's exhibit two possibly have been part of that class he taught about getting them out of their vehicle and standing to the right?

A I can tell you that was never said in this class.

Q Your Honor, no further questions.

THE COURT: May the witness stand down?

MR. METCALF: May I have a second Your Honor?

THE COURT: Yes.

MR. JANUS: What was the page number on exhibit two of the outline, if you have it there at the bottom?

THE COURT: I believe there is on two or one?

MR. JANUS: I have it. Page seven.

THE COURT: Page seven.

MR. JANUS: I renew motion to have this admitted.

MR. METCALF: No objection, Your Honor.

REDIRECT EXAMINATION

BY MR. METCALF:

Q The time between the time that you called in and the time that the defendant got in your car and you called in was approximately eight minutes. What were you doing during that time period?

A I was filling out some paper work.

Q What type paper work would that be?

A I called it my contact sheet, a piece of paper. We fill out a piece for everybody, a piece of paper we fill out on everybody that was stopped.

Q That information is?

A Name, race, vehicle information, that type of information.

Q All right.

You have to have all that information before you contact your headquarters to get to verify the information?

A I have to be in possession of that information definitely before eye contact.

Q All right.

THE COURT: How is this in any way redirect?

MR. METCALF: I thought he was talk --

THE COURT: Was it as part of your, part of the case in chief you entered the record that shows what it is. Why waste my time when I know what paper work he is filling out?

MR. METCALF: All right.

THE COURT: All right.

MR. METCALF: Trying to cover the point Mr. Janus made, Your Honor. That is fine. No further questions of this witness.

THE COURT: All right.

MR. METCALF: We move to enter the videotape as --

THE COURT: You may step down. Call your next witness.

MR. METCALF: Judge, we have no additional witnesses. Move to enter the tape, Your Honor.

THE COURT: All right. The tape and the transcript are in evidence.

Does the defendant care to put on any evidence?

MR. JANUS: Yes, sir.

Come around, Mr. Porter, please.

SALEEM PORTER
AFFIRMED TO TELL THE TRUTH
AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. JANUS:

Q What is your name sir?

A Saleem Porter.

Q What is your age?

A Twenty-eight.

Q For the record, you are an African American citizen of this country; is that correct?

A Yes, sir.

Q Directing your attention back to August 22nd, 2001, were you driving a MOTOR vehicle north bound direction?

A Yes, sir.

Q Where were you coming from?

A Atlanta, Georgia.

Q Where were you going?

A New Jersey.

Q What was the purpose of going to New Jersey?

A My grandmother's birthday was maybe two or three days away.

Q August 27, that Monday?

A Yes.

Q How about your daughter? Had she had a birthday?

A Yes. August 9.

Q Both of them live in New Jersey?

A Yes, sir.

Q Had you gotten the car, gotten permission to drive that vehicle?

A Yes.

Q Did you have a duly licensed driver's permit?

A Yes, sir.

Q And did you have the registration for the vehicle?

A Yes, sir.

Q To the best of your knowledge, the vehicle wasn't stolen or anything irregular about it?

A No, sir.

Q Before August 22nd, the year 2001, had you ever gotten a ticket from the State Policemen in the State of Virginia?

A Yes, sir.

Q I will hand you now a copy of a citation. Ask if you can identify that as the citation that you received?

A Yes, it is.

MR. METCALF: Your Honor, we move to enter that as defendants exhibits number three.

THE COURT: It will be received in evidence.

BY MR. METCALF:

Q At that time you were charged with going 80 in a 65-mile hour zone; is that correct?

A. Yes, sir.

Q Could you tell The Court whether or not you were ever asked to leave your vehicle when you were given that summons?

A No, sir. The officer asked me to remain in my vehicle, and he went back to his vehicle. And he issued me a traffic summons, and told me I was free to leave.

Q Approximately how long did that take?

A A few minutes. Maybe three minutes.

Q On the day in question, the officer -- what did Trooper Elliott tell you to do after he stopped you and told you why?

A He told me to come back to his vehicle.

Q Did you think you had any choice?

A No. He didn't give me a choice.

Q As you got out, as the video depicts, tell The Court what happened.

A He asked me if I had any weapons or anything on me.

Q What did you answer?

A I told him no.

Q Did you have any weapons on you?

A No, sir.

Q Then what did he do?

A He patted me down, and then he put me in his vehicle.

Q Do you know how long you were in his vehicle from the time you got in there until the time you left?

A I don't know the exact time, but it was some time.

Q Once you were in his vehicle, Mr. Porter, did you think you could just pick up and leave at any time?

A No, sir.

Q And were you ever given a ticket for either speeding, speeding or lane change?

A No, sir, I wasn't.

Q Now, sir, do you recall him telling you that his he was an interdiction officer?

A Yes, sir.

Q And did he tell you he would like to do, if anything?

A He said that he was an interdiction officer, and he didn't necessarily think that I had anything in the vehicle, but that was his job. And he said he wanted to take a quick look through the vehicle.

Q Did you agree to that?

A Yes, sir, I did.
Q Why did you agree to that?

A At that point I thought that he was just going to basically look at, you know the plain view and see if it was any problems, discrepancies, and let me go on his way, being he wasn't going to issue a ticket.

Q Did he ever tell you it was going to take longer than a quick look through, or a few minutes?

A Never.

Q Ever ask you if you consented to have other troopers or agents look through the car?

A No, sir.

Q Ever ask if it was okay if a dog ran around the vehicle?

A No, sir.

Q At any time when they were going through this as depicted in the video, did you think you could leave his vehicle?

A No. He told me to remain in his vehicle.

Q What did he tell you to do if you needed to get his attention?

A Said blow the horn or roll down the window and yell.

Q Did you ever, Mr. Porter, consent to him or anyone else having an extensive, time-consuming search of your vehicle?

A No, sir. He told me explicitly it would take, he said, a quick second, you know.

Q Answer any questions Mr. Metcalf has.

CROSS EXAMINATION

BY MR. METCALF:

Q Mr. Porter, counsel gave me a copy of the ticket that you got in January of this year in Mecklenberg County. Was that your car, sir?

A No. I believe a rental car.

Q All right.

Now, sir, the car that you had on the 22nd was whose car, please?

A Deana Timpanaro.

Q Do you know her?

A Yes.

Q Did you speak with her and ask for permission to use that car?

A Yes, sir I did.

Q When did you do that, sir?

A Previously Miss Timpanaro was in Atlanta, I was injured, and she had been there for some time taking care of me. And while she drove the vehicle to Atlanta and the vehicle was left, she had to go home, so the vehicle was in Atlanta around, I believe, August 8. I was in New Jersey for my daughter's birthday, and I had spoke with Deana to let her know I would be back

for my grandmother's birthday on the 27th. She asked if I would mind bringing the vehicle up. I usually fly. And I agreed to drive the vehicle to New Jersey.

Q So she drove it down and left it there?

A Yes, sir.

Q Now, you told the police officer when you were stopped, according to the videotape, that you were going from Atlanta to New Jersey for your grandmother's birthday and daughter's birthday. And he said, you were going to split them down the middle. You said, one was August 8, and the other was August 22. That wasn't true, was it. You already had been there on August 8?

MR. JANUS: I don't think this is relevant to the search issue.

MR. METCALF: Credibility, Your Honor.

THE COURT: It isn't probative of anything, but go ahead and get it out of your system.

Q That wasn't true?

A No, that is incorrect. Excuse me. That is incorrect about it not being true. I was in New Jersey on August 8. I celebrated my daughter's birthday August 9. She was to have a birthday party and the children from her class was to come back from vacation for school. So that would be after the 27th of August.

Q You heard the tape, did you not? Do you disagree with anything said on the tape?

A Yes.

Q You do?

A As far as my testimony, no.

Q All right.

Now, sir, so you talked to Miss Timpanaro in August to be able to get her permission?

A No, sir. When I was in New Jersey I spoke with her. She asked if I would mind driving the vehicle back to New Jersey.

Q August 8 you said you were there?

A Yes.

Q She asked you that?

A Yes.

Q If she had testified before a grand jury that she had not seen you in a very long time, and never gave you permission to drive this vehicle, would she be lying, sir?

A Yes, sir, she would.

Q We move to enter the grand jury testimony of Deana Timpanaro.

MR. JANUS: I object. I have had no opportunity --

THE COURT: The objection -- you were sleeping when the objection should have been made. One witness is never required to testify as to the veracity and truthfulness of another witness. I am disregarding it. That is my assignment.

Proceed.

BY MR. METCALF:

Q All right.

Now, sir, you understood the officer's instructions, if you wanted to get his attention, you would yell out the window, correct?

A Yes.

Q You could punch the horn?

A Yes, sir.

Q Was the right arm or left arm injured?

A My right arm.

Q Left armed worked fine, didn't it?

A No, sir.

Q Left arm didn't work either?

A Left arm as an injury, also.

Q Did that injury keep you from punching the horn?

A No, sir, it didn't.

Q Did it keep you from putting the window down if you wanted to? In fact, the window was down, wasn't it?

A I believe at some time it was.

Q It was August, right warm, right warm in Virginia?

A He had air conditioning on.

Q Did you at any time say, I want to talk to you about this? I don't want you to search my car, stop this?

A When Mr. Elliott engaged in his search, he just went ahead and did what he did. He didn't seek to ask me any further, did I have a problem with anything? Mr. Elliott said specifically, this would just take a quick second.

And he just went ahead, and did what he did.

Q But you never said another word other than, go ahead, I am a law abiding citizen, look at the car?

A I said he could take a look, a quick look.

Q You are a convicted felon, aren't you, sir?

A Yes, sir.

Q How many times?

A One time, sir.

Q Are you sure that is not two offenses, sir?

A Sir, I believe it was one. Was one. It was, I believe, one conviction.

Q One incident, possibly?

A One. It was one conviction. I had went trial, and I think I had took a plea bargain. was one, I believe. One felony conviction.

Q Were you ever convicted of aggravated assault, sir, in New Jersey?

A Yes, sir.

Q Were you also convicted of felony resisting arrest?

A Yes, sir, that was the same.

Q Same even, but two different charges, isn't it?

A But one conviction, sir.

Q Move to enter the record, Your Honor.

THE COURT: All right.

Any further evidence?

MR. METCALF: Not on behalf of the United States, Your Honor.

THE COURT: Mr. Janus?

MR. JANUS: No redirect. That concludes the evidence.

THE COURT: Fine. You may return to your seat, Mr. Porter:

(witness stood aside)

THE COURT: Until I read the transcript -- I will keep the record open until I do that, and watch all the tape. Is that what you want?

MR. JANUS: Yes, sir.

MR. METCALF: We think that is appropriate.

THE COURT: All right

And then how about, when would you like to argue the case? How about sometime Tuesday?

MR. METCALF: Mr. Janus had jury trials on Tuesday. I am available.

MR. JANUS: Your Honor, I am with Judge Spencer Monday and Tuesday. Probably better if we didn't do it then.

THE COURT: What do you have, two cases?

MR. JANUS: No, sir. One.

THE COURT: When does a case last two days?

MR. JANUS: When the government brings 20 convicted felons to testify against one innocent client.

THE COURT: But this case is set for trial on 28th, isn't it?

MR. JANUS: No, sir, I hope The Court has corrected that. There is some discrepancy. Set for the 27th. Mr. Metcalf and I pointed out to The Court that The Court had. the wrong day. I hope The Court changed it to the 27th.

THE COURT: I have it now for the 27th.

MR. JANUS: This will not take more than a day. period.

Is The Court open on Friday 23rd, Judge?

THE COURT: I am not. I am out of town.

MR. JANUS: That will be fine, Your Honor.

THE COURT: All right.

MR. METCALF: What time?

THE COURT: 9:00 o'clock.

MR. METCALF: That is fine.

MR. JANUS: I am sure I can work it out if the jury should still be --

THE COURT: No, I will tell you what. If you are unavailable, I will decide it on the record as made. I am going to give you that option. Either appear here at 9:00 o'clock on the 21st, or I will decide it on the record as made.

MR. JANUS: I would prefer to argue.

THE COURT: I don't think the judicial decision-making process will be aided by a whole lot of oral argument, because I remember all the evidence, and I basically am familiar with the law. But I am giving you an option. Either be here at 9:00 o'clock on the 21st, or you submit it on the record as made. I try to be helpful to counsel and make difficult decisions for them.

MR. JANUS: We need all the help I can get. I will be here one way or the other at 9:00 o'clock.

THE COURT: Recess court awaiting further word from the jury.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA
Plaintiff,

v.

SAREEM PORTER,
Defendant.

Case No. G2-O1-0040

Transcript of the above-style matter prepared from the videotape of the stop by Trooper Elliott, August 22, 2001.

PART I

M13:47:50 – M14:35:30

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RADIO: All right. He's going to be at about the 100 because I'm at the 99, and I haven't seen him yet.

TROOPER ELLIOTT: Well, That's about right. We're just pulling over right now.

RADIO: Okay. I'm going to go it on the shoulder. I'll be back in.

TROOPER ELLIOTT: How you doing, bud? You got your driver's license with you? Okay. You got the registration, too?

MR. PORTER: It's all right there.

TROOPER ELLIOTT: Is it your car?

MR. PORTER: No.

TROOPER ELLIOTT: Not your car? All right. I stopped you for a couple reasons. One, you're going over the speed limit, along with about three quarters of everybody else out here; two, you haven't used your turn signal one time. I've been behind you for a little while, and you have changed lanes several times, but you've never hit your turn signal.

MR. PORTER: Officer, I ain't going to sit here and jam you and tell you all I was't. I am going to be honest with you. I haven't been behind the wheel in a long time, Officer. I'm just totally -- you know, I haven't been behind the wheel in a while. I was getting my butt back together.

TROOPER ELLIOTT: What happened?

MR. PORTER: I had nerve damage in my arm and all my nerves is (inaudible).

TROOPER ELLIOTT: How'd you get it?

MR. PORTER: Uh, from a (inaudible).

TROOPER ELLIOTT: So you were injured?

MR. PORTER: Yeah.

TROOPER ELLIOTT: How were you injured?

MR. PORTER: At work. (inaudible) I haven't been behind the wheel in a long time.

TROOPER ELLIOTT: Come on back to my car if you don't mind. We'll run this stuff and get you out of here in a hurry.

MR. PORTER: All right.

TROOPER ELLIOTT: Can you use that arm?

MR. PORTER: Yeah, I can use it.

TROOPER ELLIOTT: Is it just getting better all the time? Just takes a while?

MR. PORTER: Yeah. It's better right now because I have to go (inaudible)

TROOPER ELLIOTT: Before I put you in, you don't have any -- your shirt's kind of baggy. You don't have any -- I don't know you. You don't have anything in your pockets, do you, that I need to know about?

MR. PORTER: Nope.

TROOPER ELLIOTT: Can I feel?

MR. PORTER: Yeah.

TROOPER ELLIOTT: You don't mind -- don't put your hands up. This is all just voluntary stuff here and you don't need to -- what is that? Just money?

MR. PORTER: Yeah.

TROOPER ELLIOTT: And what is that big thing there on the side? What is that?

MR. PORTER: That's a two-way communication pager.

TROOPER ELLIOTT: Good gracious. That's a big thing.

I have got some papers sitting there on the seat. Let me move them. All right.

Oh, man. Sorry about that. I forgot that was in there.

You don't have a radar detector; do you?

MR. PORTER: No.

TROOPER ELLIOTT: It doesn't work very good if you have a radar detector. All right. Okay. But your turn signals work; right?

MR. PORTER: Yeah. Everything works.

TROOPER ELLIOTT: Okay. This car's not -- man, they are making these cars smaller and smaller.

MR. PORTER: Yeah.

TROOPER ELLIOTT: I used to have a car that had all the room in the world and I could spread out, and now I got to squeeze into everything they got. I got all this equipment and no place to put it.

MR. PORTER: (Inaudible.)
TROOPER ELLIOTT: Yeah, man.

MR. PORTER: (Inaudible.)

TROOPER ELLIOTT: Hold on.

There you go. That other one. Let me cut it down.

I mean, what happened? I mean --

MR. PORTER: A nail gun. I'm a custom home builder. I have a custom home-building company --

TROOPER ELLIOTT: One of those --

MR. PORTER: And --

TROOPER ELLIOTT: A compressor or the one with the little fast-load cartridges?

MR. PORTER: The one with the fast-load cartridges.

TROOPER ELLIOTT: Daggone, man.

We have been -- I have goofed around with those things a million times.

MR. PORTER: Yeah, but straight through sheet rock?

TROOPER ELLIOTT: No.

MR. PORTER: That's it. Straight through sheet rock.

TROOPER ELLIOTT: Where did it go.

MR. PORTER: Right here.

TROOPER ELLIOTT: Damn. Just one nail did that?

MR. PORTER: One nail. It hit directly in the nerve. And when it severed the nerve, that's when everything just - man --

TROOPER ELLIOTT: Shew. Sorry it happened to you, bud.

MR. PORTER: That's why I have been --

TROOPER ELLIOTT: As long as -- it's going to get better?

MR. PORTER: They said it's going to be between 18 months and 2 years. But I got to get another nerve graft done, so that the muscle will start healing again.

TROOPER ELLIOTT: Well, you know the speed limit out here?

MR. PORTER: 65.

TROOPER ELLIOTT: Yeah. How fast do you think you were going?

MR. PORTER: Honestly, I don't even know. I was just, man, listening to the music and I was just driving.

TROOPER ELLIOTT: Well, you were up and down. Sometimes you were doing 70, sometimes you were doing about --

MR. PORTER: Really, I think I was just -- I think I was going with the flow of traffic, you know. I was just -

TROOPER ELLIOTT: You were. But you can't really use that -- I'm not saying you're giving me excuses, because you re not.

MR. PORTER: Right.

TROOPER ELLIOTT: But when people say that, you know, you're part of the -- you're making up the flow when you're doing that kind of speed. It's not crazy high, but, you know, from 70 to upright of 79 or 80 is what you're -- since I have been behind you anyway. We've fluctuated, and it's been because of the car in front of you, how ever fast the car in front of you was going.

But I noticed that you -- the four or five cars that are around you in the left lane have stayed in the left lane; you, on the other hand, have changed lanes. And when I pulled you over, you were actually in the right lane right here. So you have been moving around a little bit more, and that's pretty dangerous when you're looking at those kind of speeds.

So have you ever had a ticket in Virginia?

MR. PORTER: Um -- actually I don't even recall. It's been a while since I been behind the wheel. I haven't even driven any.

TROOPER ELLIOTT: Oh. Is that how long it is?

MR. PORTER: Yeah.

TROOPER ELLIOTT: Is this your correct P.O. Box?

MR. PORTER: Yes.

TROOPER ELLIOTT: Okay. And who does the car belong to?

MR. PORTER: (Inaudible.) She's from New Jersey. She just got transferred from New Jersey down to Atlanta.

TROOPER ELLIOTT: Okay. So that Putnam Avenue address isn't any good for her?

MR. PORTER: No. The P.O. Box -

TROOPER ELLIOTT: Oh, I ain't worried about it. But the Putnam Avenue is no good?

MR. PORTER: Yeah.

TROOPER ELLIOTT: She lives in Georgia now.

MR. PORTER: Yeah.

TROOPER ELLIOTT: Oh. Okay.

What year is the car? '94.

So, now, where are you coming from right now?

MR. PORTER: Georgia.

TROOPER ELLIOTT: And you're going to?

MR. PQRTER: New Jersey.

TROOPER ELLIOTT: New Jersey now. What are you going to do up in New Jersey?

MR. PORTER: My grandmother's birthday is Monday, and my daughter's birthday just passed on the 9th, so I'm going --

TROOPER ELLIOTT: You're going to split them and go in the middle, huh? Get them both with one trip.

MR. PORTER: (Inaudible.)

TROOPER ELLIOTT: So what are you doing now in Georgia, now that -- are you back working?

MR. PORTER: (Inaudible.) My company is still running. I own the company. My company is still working -

TROOPER ELLIOTT: Oh, okay. What kind of instruction do you all do? Just residential stuff?

MR. PORTER: Just residential. Custom home built. We just finished a home about 2 months ago (inaudible). And we bought a spot on 30 acres, so I'll be building (inaudible) homesites out there.

TROOPER ELLIOTT: Just your construction crew? How many crews you got?

MR. PORTER: No. Everything is subcontractor.

TROOPER ELLIOTT: Oh. Just you.

MR. PORTER: I own the company. And I don't just build houses just to put there. People have to come in and (inaudible) deposit. And then we do architectural work. We have an architect that works for us and then from there, we (inaudible) the house.

TROOPER ELLIOTT: That's a lot of phone work; isn't it?

MR. PORTER: It is, but, you know, when you have a good quality work, you really don't need that kind of advertising and things like that. It sells itself.

The home that we just built was actually for a couple from out of (inaudible), and they split. And they had to put the house on the market because they divorced -- (inaudible) 2.9 million.

TROOPER ELLIOTT: Daggone. How long have you lived in Atlanta?

MR. PORTER: About 5 years.

TROOPER ELLIOTT: Where are you from?

MR. PORTER: New Jersey.

TROOPER ELLIOTT: How'd you get -- why'd you move?

MR. PORTER: My dad (inaudible).

TROOPER ELLIOTT: Wait. Let me get on break on the radio here and (inaudible)

937, Richmond.

Maybe they're not going to let me go.

So you don't like the cold weather; huh?

MR. PORTER: Well, my -- it makes my nerves hurt. So it makes my hands hurt, you know, the cold air (inaudible)

TROOPER ELLIOTT: 937, Richmond.

RADIO: 937?

TROOPER ELLIOTT: Can you check a 27, name and date of birth, Georgia/Virginia?

RADIO: Go ahead.

TROOPER ELLIOTT: Last name is porter; P, papa -- O, Oscar -- R, Romeo -- T, tango -- E, echo -- R, Romeo. First name spelling: S, Sierra -- A, alpha -- L, Lincoln -- E, echo -- E, echo -- M, Mike. D.O.B. of 1973, 10-29.

How do you get around if you can 't drive?

MR. PORTER: (Inaudible) drove me around a lot, and I have a lot of -

TROOPER ELLIOTT: You turned her into a chauffeur, I guess, for the past couple months.

MR. PORTER: Well, for the most part. I was hospitalized for, you know, for a little while. And then when I came home, I wanted to (inaudible) physical therapy. So within minutes of physical therapy, but, you know, (inaudible) where I'm staying at now, a central location to (inaudible) right there. I walked the whole --

TROOPER ELLIOTT: (Inaudible.)

MR. PORTER: No. The house we used to --

TROOPER ELLIOTT: Oh.

MR. PORTER: Where I have to go, so it wasn't really a big strain on her.

TROOPER ELLIOTT: Where is that?

MR. PORTER: Right in Atlanta.

TROOPER ELLIOTT: Right in downtown?

RADIO: 937; subject is clear. Cleared on file in Virginia. Status: Valid, Georgia for 10, 2005.

TROOPER ELLIOTT: 10-4. Thank you.

That was painless. Here's your stuff back. Look, um, this -- you got to watch it. We're out here in secret cars now. I mean, they got us driving up here and stopping people for doing this kind of crazy stuff, so --

MR. PORTER: I mean, I understand. I'm really - I am --

TROOPER ELLIOTT: Out of practice.

MR. PORTER: It's like -- it's like a lot of stuff doesn't even come natural to me. Sometimes I find myself driving and I'm holding up traffic because I'm not -- so I'm trying to get back into it --

TROOPER ELLIOTT: Yeah.

MR. PORTER: -- (inaudible). I'll be more careful.

TROOPER ELLIOTT: It's just -- you know, turn signals, you know. I mean, we don't like people to speed. But when you speed and the combination with dangerous lane changes, you're going to get put on the shoulder. And, you know, I am going to give you a warning on it. I'm not going to write you a

ticket, but you -- that's what's going to get you stopped. I mean, you got to go the speed limit anyway, but don't combine a couple violations at the same time. That's really going to put you over here; all, right? Well, you have a good trip up there; all right? You want me to let you out or --

MR. PORTER; Yeah.

TROOPER ELLIOTT: Hey, befofe you go --

MR. PORTER: Yeah?

TROOPER ELLIOTT: You don't have any firearms or weapons --

MR. PORTER: No.

TROOPER ELLIOTT: --or money or drugs or anything like that in the car?

MR. PORTER: No.

TROOPER ELLIOTT: Don't have nothing?

MR. PORTER: I am a law-abiding citizen, and I'm in the 40 to 50 percent tax bracket.

TROOPER ELLIOTT: You make more money than I do.

MR. PORTER: I make over a half a million dollars a year, and I wouldn't jeopardize my life and my career --

TROOPER ELLIOTT: Well, I make a lot less than that. But I tell you, because why I'm asking is because I am part of a special -- special group of troopers here out on the highway, and our job is to stop the flow of drugs and weapons --

MR. PORTER: Right.

TROOPER ELLIOTT: -- into and through the Commonwealth of Virginia.

MR. PORTER: Right.

TROOPER ELLIOTT: That's what my job is out here. And in doing that, when we see a violation, a lot of times we'll pull a car over and try to get their permission to look through their car.

MR. PORTER: Officer, you can look through the car. I have no problems looking through the car, but I'm just letting you know, I come from good stock.

TROOPER ELLIOTT: I know you do.

MR. PORTER: My dad's an attorney in Atlanta, so I'm familiar with the process and things like that.

TROOPER ELLIOTT: Well, I can tell you how many times have I been pulled over and they are out of here in 5 minutes.

MR. PORTER: I mean, you can look through the car.

TROOPER ELLIOTT: I don't think you'll have any problem.

MR. PORTER: No problem. You can look through the car.

TROOPER ELLIOTT: All right. Just sit in the car here and it's -- you have anything, but that's what my job is. It's just a minor inconvenience to people, then, you know, I apologize. It's strictly voluntary. And just going through, take a quick look, and we'll get you out of here and no problems.

Something's coming by us right now. I don't know what it is.

I'm back on surveillance. I am going to be out of the vehicle for a few minutes.

RADIO: 10-4.

TROOPER ELLIOTT: All right. No -- there's no gun or anything in there? Nothing I need to know about?

MR. PORTER: No.

TROOPER ELLIOTT: Okay. That's good. Just sit here. And look, if you want my attention --

RADIO: You want us to come on up or --

TROOPER ELLIOTT: Yeah. 10-4.

-- just toot my horn, man. And there might be a car pulling up behind me in a few minutes. There's just a couple of us out, here doing it, and we like to back each other up. So just toot my horn it you want my attention, or knock on the window, or put the window down and yell at one of the other guys. Okay?

MR. PORTER: Okay.

TROOPER ELLIOTT: I'll open it.

MR. PORTER: You can't -- you can't put the windows up with the key in the ignition; otherwise, the doors will lock. So you have to keep the window down. If the car is running, the key (inaudible) --

TROOPER ELLIOTT: The doors will lock?

MR. PORTER: The doors will lock.

TROOPER ELLIOTT: I won't put them up. All right.

TROOPER BADKINS: How is everything looking?

TROOPER ELLIOTT: Well, he's kind of being overly cooperative; telling me how, you